

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 -----

4 THE STATE OF MINNESOTA,
5 BY HUBERT H. HUMPHREY, III,
6 ITS ATTORNEY GENERAL,

7 AND

8 BLUE CROSS AND BLUE SHIELD OF
9 MINNESOTA,

10 PLAINTIFFS,

11 VS.

12 FILE NO. C1-94-8565

13 PHILIP MORRIS, INCORPORATED, R.J.
14 REYNOLDS TOBACCO COMPANY, BROWN &
15 WILLIAMSON TOBACCO CORPORATION,
16 B.A.T. INDUSTRIES, P.L.C., LORILLARD
17 TOBACCO COMPANY, THE AMERICAN
18 TOBACCO COMPANY, LIGGETT GROUP, INC.,
19 THE COUNCIL FOR TOBACCO RESEARCH-U.S.A.,
20 INC., AND THE TOBACCO INSTITUTE, INC.,

21 DEFENDANTS.

22 -----

23

24 DEPOSITION OF
25 ROBERT DOLAN
26 August 14, 1997
27 9:00 a.m.

28

29

30

31 REPORTED BY
32 LORI A. CASE, RPR
33 620 PLYMOUTH BUILDING
34 MINNEAPOLIS, MINNESOTA 55402

35

2 office of Robins, Kaplan, Miller & Ciresi, 2800 LaSalle
3 Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota,
4 commencing at approximately 9:00 a.m. on August 14, 1997,
5 before Lori A. Case, Registered Professional Reporter and
6 Notary Public.

7

8 * * * *

9

10 A P P E A R A N C E S

11

On Behalf of the Plaintiffs:

12

Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402

15

BY: Daniel A. O'Fallon
Tara D. Sutton

16

17 On Behalf of Defendant Philip Morris, Incorporated:

18

Dorsey & Whitney
Pillsbury Center South
220 South Sixth Street
Minneapolis, Minnesota 55402

19

20

BY: Peter W. Sipkins

21

Johnson & Tyler
2127 R Street Northwest
Washington, D.C. 20008

22

23

BY: Julia J. Tyler

24

25

1 A P P E A R A N C E S (Cont.)

2

On Behalf of Defendant Lorillard Tobacco Company:

3

Shook, Hardy & Bacon

4 600 Market Square West
801 Pennsylvania Avenue Northwest
5 Washington, D.C. 20004

6 BY: John C. Monica, Jr.
Allen R. Purvis
7

8 On Behalf of Defendant Council for Tobacco
Research-U.S.A., Inc.:

9 Maslon, Edelman, Borman & Brand
10 3300 Norwest Center
90 South Seventh Street
11 Minneapolis, Minnesota 55402

12 BY: Kirk O. Kolbo

13 Debevoise & Plimpton
875 Third Avenue
14 New York, New York 10022

15 BY: Eric M. Falkenstein

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1 I N D E X

2

WITNESS - ROBERT DOLAN

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Examination by Mr. Purvis

5, 160

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Examination by Mr. Falkenstein

91

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* * * *

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7 E X H I B I T I N D E X

8 DEFENDANTS' EXHIBITS: FIRST PAGE
9 (Not Attached) REFERENCE

10 3301 Curriculum vitae of Robert Dolan (No Bates) 8
11 3302 Expert Analysis of Profitability by Paul J. 72
12 Much, June 1997 (No Bates)
13 3303 Document entitled "Robert Dolan Discovery 75
14 Documents" (No Bates)
15 3303A Document entitled "Documents from Hill 87
16 Archives -- WI Historical Society"
17 (No Bates)
18 3304 Handwritten notes of Robert Dolan 207
19 (No Bates)
20 3305 8-6-97 letter from Tara Sutton to Robert 84
21 Schwartzbauer (No Bates)
22 3306 Expert Report of Robert J. Dolan, Ph.D. 110
23 (No Bates)
24
25

5

1 ROBERT DOLAN, 08:59:04

2 after having been first duly sworn, was

3 examined and testified as follows: 08:59:22

4 EXAMINATION

5 BY MR. PURVIS:

6 Q. Would you state your name for the record, please? 08:59:26

7 A. Robert J. Dolan. 08:59:26

8 Q. You are a professor at Harvard University; is that 08:59:30

9 correct? 08:59:30

10 A. That's correct. 08:59:30

11 Q. Professor, first we are going to go around the room 08:59:32

12 and just introduce ourselves for the record. 08:59:34

13 I met you earlier, but I am Allen Purvis 08:59:38

14 with the firm of Shook, Hardy & Bacon in Washington, 08:59:40

15 D.C. My firm represents Lorillard Tobacco Company. 08:59:42

16 Also with me today is John Monica, Jr. 08:59:44

17 MR. SIPKINS: Peter Sipkins from Dorsey & 08:59:48

18 Whitney on behalf of Philip Morris. 08:59:50

19 MS. TYLER: Julia Tyler of Johnson & Tyler 08:59:50

20 in Washington, D.C. on behalf of Philip Morris. 08:59:54

21 MR. KOLBO: Kirk Kolbo, local counsel for 08:59:56

22 CTR, with the firm of Maslon, Edelman, Borman & 09:00:00

23 Brand here in Minneapolis. 09:00:00

24 MS. SUTTON: Tara Sutton from Robins 09:00:04

25 Kaplan on behalf of Plaintiffs. 09:00:04

6

1 MR. O'FALLON: Dan O'Fallon from Robins 09:00:08

2 Kaplan on behalf of Plaintiffs. 09:00:08

3 Where is Mr. Monica? 09:00:10

4 MR. PURVIS: He's off marking exhibits, so 09:00:12

5 he will be here in just a moment. 09:00:14

6 BY MR. PURVIS:

7 Q. Professor, you have had your deposition taken 09:00:16

8 before? 09:00:18

9 A. I have. 09:00:18

10 Q. And so you are familiar with the process where I 09:00:20

11 will ask you questions and you will respond to those 09:00:22

12	questions and everything will be taken down by the	09:00:24
13	court reporter.	09:00:26
14	If at any time you don't understand a	09:00:28
15	question, if I misphrase something, please just ask	09:00:32
16	for clarification. Otherwise, we will assume and	09:00:34
17	the record will assume that we are communicating.	09:00:36
18	Could you give me your business address	09:00:40
19	and title?	09:00:42
20	A. My business address and title? Let's see. My title	09:00:44
21	is I am an Edward W. Carter professor of business	09:00:50
22	administration at Harvard Business School. And the	09:00:52
23	address is Soldiers Field, Boston, Massachusetts	09:00:54
24	02163.	09:00:56
25	Q. Could you describe for me very briefly your	09:01:00

7

1	educational background?	09:01:02
2	A. Sure. I went to Boston College, undergraduate in	09:01:06
3	mathematics. I went -- from Boston College I	09:01:10
4	enrolled in a Ph.D. program at the University of	09:01:14
5	Rochester. I completed my first year of the Ph.D.	09:01:18
6	program and then I went in the Army for a few	09:01:20
7	years. I came back, finished up my Ph.D. in	09:01:24
8	operations research with minors in marketing and	09:01:28
9	statistics. And then I joined the faculty at the	09:01:32
10	University of Chicago.	09:01:34
11	Q. Your Ph.D. was in operations research; is that	09:01:40
12	correct?	09:01:40
13	A. That's correct.	09:01:42

14 Q. And could you describe that discipline for me? 09:01:44

15 A. Basically, it's kind of applied mathematics, 09:01:48

16 mathematics applied to business problems. 09:01:52

17 Q. What types of courses would you take in operations 09:01:58

18 research? 09:01:58

19 A. Well, things like mathematical programming. I mean, 09:02:02

20 the general subject area of operations research is 09:02:06

21 maximizing an objective function subject to some 09:02:10

22 constraints. So it's, you know, a lot of 09:02:14

23 mathematical programming, a lot of statistics, that 09:02:16

24 sort of thing. 09:02:16

25 Q. Is operations research something that is unique to 09:02:22

8

1 the field of marketing or business? 09:02:24

2 A. Well, certainly not unique to the field of 09:02:28

3 marketing. It's sort of an underlying discipline or 09:02:30

4 sort of a set of tools which people apply in 09:02:34

5 marketing, production, finance, and so on and so 09:02:38

6 forth. 09:02:38

7 Q. Is operations research a field which is applied 09:02:40

8 outside the field of business? 09:02:42

9 A. Yes, I would say so because, I mean, it's 09:02:46

10 basically -- when you talk about something as 09:02:50

11 general as how do you figure out where -- you know, 09:02:54

12 what set of variables maximizes an objective 09:02:56

13 function subject to certain constraints, I mean, 09:03:00

14 that has applicability outside business situations, 09:03:04

15 sure. 09:03:04

16 Q. During your undergraduate career at Boston College 09:03:06

17 did you have any minors? 09:03:08
18 A. Yes, economics. 09:03:12
19 Q. Your major was mathematics? 09:03:14
20 A. Correct. 09:03:14
21 Q. And a minor in economics? 09:03:16
22 A. That's correct. 09:03:16
23 Q. Professor, I am going to hand you what we have 09:03:22
24 marked, I thought we marked, as -- I guess we 09:03:28
25 haven't marked it yet. I am going to hand you your 09:03:34

9

1 CV and ask the court reporter to mark it as 09:03:36
2 Exhibit 1. 09:03:38
3 A. Okay.
4 (Discussion off the record.)
5 MR. PURVIS: Let's go back on the record. 09:04:42
6 BY MR. PURVIS:
7 Q. Professor, I am handing you what we are going to 09:04:46
8 mark in a few moments with a consecutive exhibit 09:04:48
9 number that's pursuant to an agreement the attorneys 09:04:52
10 have in this case, and we are tracking down that 09:04:54
11 number right now. 09:04:56
12 A. Okay. 09:04:56
13 Q. Let's refer to this as your curriculum vitae for the 09:05:00
14 moment. All right? 09:05:00
15 A. Fine. 09:05:00
16 Q. Have you had a chance to look at that and verify it 09:05:02
17 is, in fact, your curriculum vitae? 09:05:06
18 A. Yes. 09:05:08

19	Q.	In the upper right-hand corner of your curriculum	09:05:16
20		vitae it indicates the date of May 1997. Is that	09:05:18
21		when it was last updated?	09:05:22
22	A.	Yes.	09:05:22
23	Q.	Is this a curriculum vitae you prepared especially	09:05:26
24		for this lawsuit?	09:05:28
25	A.	No. This would be one that I regularly, you know,	09:05:32

10

1		have on file. I may have -- you know, which I	09:05:38
2		update over time as new things get published and so	09:05:40
3		forth.	09:05:40
4		So I probably looked -- I don't recall,	09:05:44
5		but I probably looked at it sometime just before I	09:05:46
6		had to file my expert report and made sure it was	09:05:50
7		up-to-date, had the latest publication down and that	09:05:54
8		sort of thing. But it's the one I, you know, sort	09:05:56
9		of regularly have in my file.	09:06:02
10	Q.	So this CV reflects all of your publications?	09:06:04
11	A.	That's correct, it does.	09:06:06
12	Q.	And it reflects all of your association memberships?	09:06:08
13	A.	Well, I don't know that. Yeah, I guess that's	09:06:24
14		right, it does.	09:06:26
15	Q.	Do you have different versions of your CV?	09:06:32
16		MR. O'FALLON: Objection, relevance.	09:06:36
17	A.	Well, I would say no, but let me clarify. I mean,	09:06:42
18		there is a -- I also have like a one-page bio that I	09:06:46
19		use, but I do not call that my CV.	09:06:50
20	Q.	Do you have any form of your CV which is more	09:06:54
21		extensive than the one we have marked here in this	09:06:56

22 case? 09:06:58
23 A. Well, I do have a separate list of my consulting 09:07:04
24 assignments. I mean, you see here the prior expert 09:07:08
25 witness work with deposition and/or trial 09:07:10

11

1 testimony. You know, sometimes, depending upon the 09:07:14
2 situation, that goes on there and other times it 09:07:18
3 doesn't. 09:07:18
4 So sometimes a company who is thinking 09:07:20
5 about hiring me for a case may want to know who else 09:07:24
6 I have worked for on a consulting basis, and I 09:07:26
7 provide them a list of consulting clients and staple 09:07:28
8 it all together. 09:07:30
9 Q. But as we sit here today, the curriculum vitae is a 09:07:32
10 complete representation of your professional career? 09:07:36
11 A. Yes; such as a CV is meant to represent, yes. 09:07:42
12 Q. When were you first contacted about working on this 09:07:44
13 case as an expert witness? 09:07:46
14 A. Just prior to the end of the year last year, so 09:07:50
15 November or December 1996, I believe. 09:07:56
16 Q. Who contacted you? 09:07:56
17 A. Michael Ciresi. 09:07:58
18 Q. Did you know Mr. Ciresi prior to this contact late 09:08:02
19 last year? 09:08:02
20 A. I did. 09:08:04
21 MR. O'FALLON: Let me just make sure -- I 09:08:06
22 just want to caution you that to the extent we are 09:08:08
23 getting into the attorney-client work product area, 09:08:10

24 to pay real close attention and answer the questions 09:08:14
25 only to the extent necessary so as not to disclose 09:08:16

12

1 discussions. 09:08:18
2 THE WITNESS: Okay. 09:08:20
3 BY MR. PURVIS:
4 Q. You indicated you had previously known Mr. Ciresi? 09:08:22
5 A. That's correct. 09:08:24
6 Q. How did you know him? 09:08:24
7 A. I worked with him in a prior litigation. 09:08:28
8 Q. Which litigation was that? 09:08:30
9 A. It would have been Honeywell vs. Minolta. 09:08:36
10 Q. And on Attachment B to your curriculum vitae, is 09:08:40
11 that the consultation referred to as number 2? 09:08:44
12 A. That's correct; number 2 on Attachment B there, 09:08:48
13 right. 09:08:48
14 Q. Had you worked with Mr. Ciresi prior to the 09:08:52
15 Honeywell case? 09:08:54
16 A. No, I had not. 09:08:56
17 Q. Had you worked with anyone else in the Robins Kaplan 09:08:58
18 firm prior to the Honeywell case? 09:09:00
19 A. No, I had not. 09:09:02
20 Q. Your CV indicates the Honeywell case took place 09:09:06
21 generally in 1991; is that correct? 09:09:08
22 A. That's correct. 09:09:12
23 Q. Between 1991 and late 1996 had you any contacts with 09:09:14
24 anyone at the Robins Kaplan firm? 09:09:18
25 A. Yes. 09:09:18

1 Q. And could you describe those for me? 09:09:20

2 MR. O'FALLON: Objection to the extent 09:09:22

3 that you are being asked to answer a question that 09:09:24

4 involves anything that is -- where you have not been 09:09:30

5 disclosed as an expert witness, I would caution you 09:09:32

6 not to do so. But you can certainly indicate cases 09:09:36

7 in which you have been disclosed as an expert 09:09:38

8 witness. 09:09:40

9 THE WITNESS: Okay. 09:09:40

10 A. I lost it. I'm sorry, I lost your question with 09:09:46

11 the -- 09:09:46

12 Q. Between 1991 and late 1996 you indicated you had 09:09:50

13 also worked with other lawyers in the Robins Kaplan 09:09:54

14 firm; is that correct? 09:09:54

15 A. I think I said I had additional association with 09:09:58

16 Robins Kaplan. 09:10:00

17 Q. Okay. And could you describe that for me? 09:10:04

18 A. Sure. You know, as shown in number 5 here, again on 09:10:10

19 Attachment B, I worked with Robins Kaplan on 09:10:14

20 Honeywell when they -- in the Honeywell vs. Fuji 09:10:18

21 Photo Film case as well; sort of a follow-on, same 09:10:22

22 basic set of issues as in Honeywell vs. Minolta. 09:10:26

23 Q. But you did not work with Mr. Ciresi on that case? 09:10:28

24 A. Well, it didn't get to trial. I did work with 09:10:34

25 Mr. Ciresi on that case. I mean, we didn't go to 09:10:36

1 trial and he didn't defend my deposition, but I did 09:10:40
2 work with him on that case. 09:10:42
3 Q. Any other contacts with attorneys for the Robins 09:10:46
4 Kaplan firm, other than the two previous ones you 09:10:48
5 just described? 09:10:50
6 MR. O'FALLON: And that just calls for a 09:10:52
7 yes or no answer. 09:10:54
8 A. Yes. 09:10:54
9 Q. Could you describe those for me? 09:10:56
10 A. Yes.
11 MR. O'FALLON: Again, only to the extent 09:10:56
12 that you have been disclosed as an expert witness. 09:10:58
13 THE WITNESS: Okay. 09:11:00
14 A. I am working with the firm on another case at the 09:11:02
15 moment. 09:11:02
16 Q. Have you been disclosed as an expert witness in that 09:11:06
17 case? 09:11:06
18 A. Yes. 09:11:06
19 Q. And what is the name of that case? 09:11:08
20 A. That case is Hewlett-Packard vs. Pitney Bowes. 09:11:12
21 Q. Any other contacts with the Robins Kaplan firm, 09:11:18
22 other than the three nontobacco consultations? 09:11:22
23 A. That, I believe, would be my contact with the firm. 09:11:26
24 Q. With respect to the Hewlett-Packard matter, is that 09:11:30
25 currently ongoing? 09:11:32

1 A. It is. 09:11:34
2 Q. Professor Dolan, could I direct your attention to 09:11:50

3 the first page of your curriculum vitae. I have 09:11:52
4 just a few questions so I can understand here. 09:11:54
5 Between July 1985 and July 1990 it 09:12:02
6 indicates you were a professor of business 09:12:04
7 administration at Harvard; is that correct? 09:12:06
8 A. That's correct. 09:12:08
9 Q. And then in parentheses it says "marketing area." 09:12:10
10 What is the marketing area? 09:12:12
11 A. Well, the marketing area, we have -- the school is 09:12:18
12 basically divided into, I think it's probably nine 09:12:20
13 or ten different areas now. And there are 09:12:22
14 approximately twenty faculty who hold appointments 09:12:26
15 in the marketing area. 09:12:26
16 So it's basically the group of us that are 09:12:28
17 responsible for delivering the marketing curriculum 09:12:32
18 to the MBA program and the executive programs of the 09:12:36
19 school, and also for developing the school's 09:12:40
20 intellectual capital in the area of marketing. 09:12:42
21 Q. What are the other areas in the business school that 09:12:44
22 you just mentioned? 09:12:46
23 A. Well, let's see. I'm not sure I will be able to 09:12:48
24 give you a complete list, but I will get pretty 09:12:52
25 close to it, I think. Let's see. There would be 09:12:54

16

1 technology and operations management, leadership, 09:12:58
2 financial reporting and control, competition and 09:13:02
3 strategy, finance, business/government and the 09:13:08
4 international economy. Let's see. Corporate 09:13:16

5 control management -- CCMO, corporate control and 09:13:22

6 management organizations, services management. 09:13:28

7 That's approximately it. I may be missing a couple. 09:13:34

8 Q. And one of the areas equal to those you have just 09:13:36

9 described is the marketing area; is that correct? 09:13:40

10 A. Well, marketing is one of the biggest areas in the 09:13:42

11 school. But in terms of, you know, the way the 09:13:44

12 school is set up, I mean, they would have -- these 09:13:46

13 areas would have similar charters to the marketing 09:13:50

14 area, to be, you know, delivering courses in that 09:13:54

15 particular area to, as I say, both the MBA programs 09:13:56

16 and executive programs and also doing research in 09:14:00

17 that area to develop the intellectual capital of the 09:14:04

18 school. 09:14:04

19 Q. As I understand it, you currently only teach 09:14:10

20 graduate students; is that correct? 09:14:12

21 A. Well, yeah, I should -- we don't have any 09:14:20

22 undergraduates at Harvard Business School. So I 09:14:22

23 teach either graduate students, which is my 09:14:24

24 assignment for the upcoming year, but I also teach 09:14:28

25 in executive programs. 09:14:28

17

1 Q. Could you define "marketing" for me? 09:14:32

2 A. Sure. Marketing is basically -- from an academic 09:14:42

3 point of view, it's the study of how firms develop 09:14:46

4 an understanding of customer wants and needs and 09:14:50

5 then put together marketing programs to go about 09:14:56

6 satisfying those wants and needs of customers. 09:15:00

7 Q. Can companies create wants and needs in customers? 09:15:06

8 A. I'm of the school that basically you can influence 09:15:18
 9 the preferences, you can shape the preferences of 09:15:22
 10 consumers by the information that you provide them. 09:15:28
 11 But basically I do believe that, you know, 09:15:32
 12 the primary role of marketing is not so much to 09:15:34
 13 distort, you know, customers' basic wants, but it is 09:15:42
 14 to influence their perceptions of the products that 09:15:44
 15 the firm is offering. 09:15:46
 16 Q. Do you think firms can create wants and needs in 09:15:56
 17 customers? 09:15:56
 18 MR. O'FALLON: Objection, asked and 09:15:58
 19 answered. 09:16:00
 20 A. In some instances. I mean, it kind of gets to be a 09:16:12
 21 definitional thing. I mean, is there a latent -- 09:16:14
 22 you know, is there kind of a latent want or need 09:16:18
 23 which the marketing firm is able to bring forward by 09:16:22
 24 presenting a product which satisfies that particular 09:16:24
 25 need? 09:16:24

18

1 I mean, you know, we may not -- ten years 09:16:28
 2 ago, you know, we may not have known that we wanted 09:16:32
 3 a laptop computer because it wasn't within our, sort 09:16:36
 4 of, set of possible options. But now that we see it 09:16:40
 5 here you say, oh, yeah, okay, I want one of those. 09:16:44
 6 But in terms of, you know, a firm creating 09:16:48
 7 basic tastes and underlying wants of consumers, I 09:16:52
 8 think firms have limited ability to do that. 09:16:56
 9 Q. Can you give me an example of a firm that has 09:16:58

10 created a want or a need in a consumer where none 09:17:04
11 previously existed? 09:17:06
12 MR. O'FALLON: Objection. 09:17:08
13 A. Well, I would -- I mean, I guess the example I gave 09:17:12
14 a second ago I think would be one where, you know, 09:17:14
15 with the emergence of the technology -- you could 09:17:20
16 argue about whether, you know, in 1965 did we want a 09:17:24
17 laptop computer. I don't know. Maybe somebody had 09:17:28
18 that vision of a want. 09:17:30
19 But now that the industry has brought us 09:17:32
20 these laptop computers, I mean, there's a lot of 09:17:34
21 people that have the want and some of them would 09:17:36
22 even say a need for a laptop computer. 09:17:38
23 Q. When you gave that example just a moment ago, you 09:17:40
24 said that "we see" these laptop computers around. 09:17:44
25 Is that an example of where observation of others 09:17:50

19

1 created a want or a need? 09:17:54
2 A. Well, the observation -- I think laptop computers 09:18:02
3 probably is an example of a situation where the 09:18:06
4 observation of somebody else having one led to you 09:18:10
5 having -- led to people having knowledge about what 09:18:12
6 the product might do and perhaps word of mouth 09:18:14
7 about, well, this is great, it does this and that 09:18:18
8 for me. 09:18:18
9 And so that would be a situation where 09:18:20
10 other people having the product was a possible 09:18:24
11 mechanism via which someone else acquires 09:18:26
12 information about the product which may lead to 09:18:28

13 their decision to adopt it, may be one of the 09:18:30

14 contributing factors in their decision to adopt it. 09:18:34

15 Q. Can you give me any other examples of a company 09:18:36

16 creating a want or a need in a customer who 09:18:42

17 previously did not have a want or a need for a 09:18:44

18 particular product? 09:18:46

19 MR. O'FALLON: Objection, form. 09:18:48

20 A. Again, I mean, I think that they would be along the 09:18:52

21 same lines as I mentioned a moment ago. I mean, I 09:19:00

22 think it's things where basically, you know, 09:19:02

23 consumers process information from the environment 09:19:10

24 and they make decisions about this is how much I 09:19:12

25 value this product. 09:19:12

20

1 And I think firms do through their 09:19:14

2 marketing activities, you know, influence the value 09:19:18

3 that a customer places on a product. And so, you 09:19:20

4 know, in that sense marketing firms do influence the 09:19:28

5 value that a customer places on a product. And so 09:19:30

6 if it gets valued highly enough, it becomes a want. 09:19:34

7 Q. Is influencing the value a customer places on a 09:19:52

8 product the same as creating a want or a need, in 09:19:58

9 your view? 09:19:58

10 A. Well, you know, it's sort of a definitional thing, I 09:20:02

11 guess, in the sense that, I mean, if I can create 09:20:06

12 enough value for you in a product, then you come to 09:20:12

13 want it, you know. 09:20:14

14 If I can tell you, okay, if you buy this 09:20:20

15 Big Bertha driver -- I show you this Big Bertha 09:20:22
16 driver. Do you want it? You look at it and say, 09:20:24
17 No, I don't want that. Why would I want that? And 09:20:26
18 then I start telling you things about it, well, you 09:20:28
19 know, 50 percent of the pros hit the Big Bertha 09:20:32
20 driver here, why don't you take it over to the 09:20:34
21 practice tee and try it. Well, you try it out, I 09:20:38
22 show you the advertising and so forth. 09:20:40
23 The value that you place on this Big 09:20:42
24 Bertha driver goes up. At some point it gets high 09:20:44
25 enough so that you want it. 09:20:46

21

1 Q. But that example involves someone who is already a 09:20:50
2 golfer, doesn't it? 09:20:50
3 A. Well, I had in mind in that particular example that 09:20:56
4 that was somebody who, yeah, who played golf. But, 09:21:02
5 I mean, that certainly is not -- the general point 09:21:06
6 about what marketing is about is creating value in 09:21:10
7 the mind of the consumer. That does not apply to 09:21:14
8 people who are already within the product category. 09:21:16
9 Q. In your golfing example, didn't you presume that the 09:21:20
10 customer was a golfer not using a Big Bertha driver? 09:21:28
11 MR. O'FALLON: Objection, argumentative. 09:21:30
12 A. Well, in my one particular example that I gave you, 09:21:32
13 I think I just said that, yeah, that was the 09:21:36
14 assumption that was kind of in my head as I gave you 09:21:38
15 that example. But, you know, that is one particular 09:21:40
16 example. 09:21:42
17 That is not -- certainly the idea that 09:21:46

18 what marketing is about is creating value in the 09:21:50
19 eyes of the consumer so that they will then want to 09:21:52
20 purchase your product. I mean, that applies not 09:21:54
21 only to people who are currently golfing or in the 09:21:56
22 product category, but also to people who aren't yet 09:22:00
23 in the product category. 09:22:00
24 Q. Do you think that, using your own example, you could 09:22:02
25 go to a nongolfer and convince them to buy a Big 09:22:08

22

1 Bertha driver? 09:22:08
2 A. Could I go to a nongolfer -- could I get someone to 09:22:14
3 take up the game of golf because we had a new kind 09:22:18
4 of sticks that they could use? Yeah, I suspect that 09:22:26
5 that's right, that that could happen. 09:22:28
6 You know, there are people who haven't 09:22:32
7 taken up golf because the equipment of the old days 09:22:36
8 was a little harder to work with and now as the 09:22:42
9 equipment has gotten to the point where you don't 09:22:44
10 have to be nearly as skilled to get the ball to go 09:22:48
11 up in the air, that you could bring somebody into 09:22:52
12 the product category by explaining to them the 09:22:54
13 characteristics of these 09:22:56
14 new -- of this new equipment. 09:22:58
15 Q. What do you think the likelihood is that that would 09:23:00
16 happen? 09:23:00
17 MR. O'FALLON: Objection, form, 09:23:02
18 relevance. 09:23:02
19 A. Well, it all depends on what the, you know -- how 09:23:10

20 much effort somebody undertook in making it happen. 09:23:14

21 Q. Are you familiar with the concept of a mature 09:23:16

22 product? 09:23:16

23 A. A mature product? 09:23:18

24 Q. (Nodding.) 09:23:20

25 A. No. 09:23:20

23

1 Q. You have never heard the term "mature product 09:23:22

2 category"? 09:23:24

3 MR. O'FALLON: Objection, he just 09:23:26

4 answered. 09:23:26

5 A. Those are two different things. 09:23:28

6 Q. Are you familiar with the term "mature product 09:23:30

7 category"? 09:23:30

8 A. Right, I have heard people use the term "mature 09:23:34

9 product category," "mature market." Yeah, I am 09:23:36

10 familiar with that term. 09:23:38

11 Q. What is your understanding of a mature product 09:23:40

12 category? 09:23:40

13 A. Well, you know, it's a term that people use fairly 09:23:46

14 imprecisely and fairly broadly, actually. You know, 09:23:50

15 what sort of common understanding of it, I guess, 09:23:52

16 that would be in laymen's terms is, well, it's one 09:23:56

17 of these product categories where people know all 09:24:00

18 the attributes of the products and there's not much 09:24:04

19 going on, there's not much product innovation, it's 09:24:06

20 sort of an equilibrium and just not many changes 09:24:12

21 happening in this product category. 09:24:12

22 Q. Are you familiar with the concept of a life cycle of 09:24:16

23 a product category? 09:24:18
24 A. Yes. 09:24:18
25 Q. Could you describe that for us? 09:24:20

24

1 A. Well, product life cycle, which is, you know, a 09:24:24
2 theory in marketing, basically maintains that, you 09:24:26
3 know, for most -- again, this particular theory says 09:24:32
4 that, well, what typically happens is a market goes 09:24:34
5 through a number of stages, you know, where it 09:24:38
6 starts out sales at zero, and then it sort of slowly 09:24:44
7 builds through a growth phase, and then sales pick 09:24:46
8 up as more people come to know about it, then it 09:24:48
9 reaches a peak, and then sales eventually fall off 09:24:52
10 due to product obsolescence. 09:24:54
11 Q. Do you believe that marketing can create wants and 09:24:56
12 needs for a mature product category? 09:25:02
13 MR. O'FALLON: Objection, asked and 09:25:04
14 answered. 09:25:04
15 A. I believe that marketing activities can create value 09:25:08
16 in the minds of consumers, and I believe that that's 09:25:16
17 true in virtually all product categories. 09:25:20
18 Q. Professor, when I asked you to define "marketing," 09:25:22
19 you used the phrase "wants and needs." 09:25:24
20 A. Right.
21 Q. And when I asked you whether marketing efforts can 09:25:28
22 create wants and needs, using your own words, you 09:25:32
23 replied to me "influence value." 09:25:36
24 A. Right. 09:25:36

25 Q. I want to know whether you believe, in your 09:25:40

25

1 professional opinion, that marketing efforts can 09:25:42
2 create wants or needs for a mature product 09:25:46
3 category. 09:25:48

4 MR. O'FALLON: Objection, asked and 09:25:50
5 answered. 09:25:52

6 A. Well, marketing can create wants in a consumer via 09:25:58
7 the mechanism of increasing the consumer's perceived 09:26:04
8 value of the product. 09:26:06

9 Q. And my question was whether you professionally 09:26:06
10 believe marketing efforts can create wants and needs 09:26:10
11 for a mature product category. 09:26:14

12 MR. O'FALLON: Objection, that's been 09:26:16
13 asked and answered. How many times are you planning 09:26:18
14 on asking the question, sir? 09:26:18

15 MR. PURVIS: You can just say "objection" 09:26:20
16 and that's all you need to say, Dan. 09:26:22

17 A. Okay. Let me put aside needs, okay, because I 09:26:26
18 have a -- wants and needs, I realize I used the term 09:26:32
19 and I'm sure -- you've reminded me that I used it. 09:26:34

20 You know, I do believe that marketing can 09:26:36
21 create wants, and the mechanism via which it does it 09:26:40
22 is it increases the perceived value of the product. 09:26:44

23 Needs is another story. I mean, what is 09:26:48
24 needs? I mean, does needs mean something that you 09:26:52
25 get no matter what it costs? Well, you know, there 09:26:56

1 may be some limited set of categories in which 09:26:58
2 marketing creates a need. 09:27:02
3 But, you know, I do view that a proper set 09:27:06
4 of activities of marketing is to create wants within 09:27:10
5 a consumer via increasing their perceived value of a 09:27:14
6 product. 09:27:14
7 Q. Do you think marketing is a powerful tool for 09:27:16
8 companies to sell their products? 09:27:18
9 A. In some situations. 09:27:22
10 Q. Can you give me an example where it's a powerful 09:27:24
11 tool? 09:27:24
12 A. I would say the cigarette industry would be one; 09:27:30
13 computer software, computer hardware; lots of 09:27:40
14 industrial products. 09:27:42
15 I mean, you know, I think marketing -- 09:27:46
16 when you think about what marketing does, I mean, it 09:27:50
17 is a powerful tool because it allows -- it is the 09:27:54
18 mechanism via which you create value, and that's 09:27:58
19 what leads to sales. 09:27:58
20 Q. What are your duties as marketing area chairman? 09:28:02
21 Excuse me. What were they? 09:28:04
22 A. Well, basically I ran the marketing area. I was 09:28:10
23 responsible for the staffing, for the hiring, for 09:28:16
24 setting out an intellectual agenda for the area. 09:28:22
25 So that group of twenty people, it was 09:28:24

1 basically my responsibility to kind of manage that 09:28:26
2 group of twenty people in fulfillment of the 09:28:30
3 responsibilities of the school and also setting the 09:28:32
4 agenda for what I thought we ought to be doing in 09:28:38
5 the area. 09:28:38
6 Q. During that period from 1986 to 1994 when you were 09:28:40
7 marketing area chairman, did you still teach 09:28:42
8 full-time? 09:28:42
9 A. I still taught. Your administrative load as an area 09:28:50
10 chairman got you a lighter teaching load than if you 09:28:54
11 didn't have that administrative responsibility. 09:28:56
12 But, right, I still maintained a regular teaching 09:28:58
13 assignment. 09:29:00
14 Q. Were you able to conduct research in your field of 09:29:02
15 expertise during the time you were marketing 09:29:06
16 chairman? 09:29:06
17 A. Yes. 09:29:06
18 MR. PURVIS: If we could just do an 09:29:10
19 administrative thing here. The exhibit range for 09:29:14
20 this deposition is 3301 to 3400. So if we could 09:29:18
21 just take back the exhibit for a moment and have the 09:29:22
22 reporter mark it as 3301. 09:29:24
23 (Defendants' Exhibit 3301
24 marked for identification.)
25

1 BY MR. PURVIS: 09:29:40
2 Q. Professor Dolan, you have Exhibit 3301 back in front 09:29:42
3 of you now, don't you? 09:29:44

4 A. I do. 09:29:44

5 Q. And that, again, is your curriculum vitae, correct? 09:29:46

6 A. It is. 09:29:48

7 Q. Earlier I asked you to describe your education. And 09:29:52

8 I understand you got a bachelor's degree in 09:29:54

9 mathematics in 1969. And in 1976 it indicates you 09:30:00

10 received a master's degree from the University of 09:30:02

11 Rochester in business administration. 09:30:04

12 A. Um-hmm. 09:30:06

13 Q. Could you describe for me the courses you took in 09:30:06

14 the business administration master's program? 09:30:10

15 A. Well, it really wasn't in the master's program at 09:30:18

16 the University of Rochester. I was enrolled in the 09:30:20

17 Ph.D. program. 09:30:20

18 In order to get to the stage of writing 09:30:24

19 your thesis, you had to pass three qualifying exams, 09:30:30

20 one in your underlying discipline and then two in 09:30:32

21 your areas of specialization. 09:30:34

22 And some people, unfortunately, did not 09:30:38

23 make all three of those. And so if you got two out 09:30:42

24 of the three, you were given a master's degree once 09:30:48

25 you had passed two out of your three qualifying 09:30:50

1 exams. 09:30:52

2 So it was really -- I wasn't really ever 09:30:54

3 enrolled in the master's program, I was always in 09:30:56

4 the doctoral program. And just when you got 09:31:00

5 two-thirds of the way to writing your thesis you 09:31:02

9 of Rochester at that time. 09:32:20

10 Q. Did you ever take any courses in organizational 09:32:24

11 communication? 09:32:24

12 A. Organizational communication? I am not familiar 09:32:28

13 with that. Nothing by that name. Do you mean -- by 09:32:32

14 that do you mean advertising? 09:32:34

15 Q. No. Organizational communication. 09:32:36

16 A. No; I never took a course with anything like that 09:32:40

17 title, no. 09:32:40

18 Q. Did you ever take a course where the subject was the 09:32:44

19 study of how businesses communicate internally? 09:32:50

20 A. Yeah, I did take a course in organizational 09:32:56

21 behavior. 09:32:56

22 Q. And could you describe that course for me? 09:33:00

23 A. Not really. I mean, I remember I took one of those 09:33:12

24 at the U of R, but I don't really remember what it 09:33:16

25 was about. 09:33:16

31

1 Q. And that would have been during your doctoral 09:33:22

2 education years? 09:33:22

3 A. Um-hmm. 09:33:24

4 Q. That was prior to 1977? 09:33:24

5 A. Right. 09:33:26

6 Q. You made a comment in describing the process where 09:33:32

7 you said those who were unfortunate got a master's. 09:33:38

8 Did you not pass one of your tests? 09:33:40

9 A. Oh, no, I passed all mine. I was talking about 09:33:44

10 other people. 09:33:44

11 Q. Okay. 09:33:48
12 A. Once you -- there were three hurdles you had to jump 09:33:52
13 over. Once you jumped over two of them, you got a 09:33:54
14 master's degree. 09:33:54
15 So I jumped over the first two that were 09:33:58
16 in front of me, so they gave me a master's degree. 09:34:00
17 Then I jumped over the third one and wrote my 09:34:02
18 thesis. 09:34:02
19 Q. And that third hurdle was operations research? 09:34:06
20 A. You know, I don't remember the order in which I 09:34:08
21 jumped the hurdles, to tell you the truth. 09:34:10
22 Q. Okay. But your underlying discipline was operations 09:34:12
23 research? 09:34:12
24 A. That's correct. 09:34:14
25 Q. Could you describe your dissertation for us? 09:34:20

32

1 A. Sure. Well, you see the title on there is: 09:34:24
2 "Priority Pricing Models for Congested Systems." 09:34:26
3 And this was back in the days when 09:34:30
4 everybody did things on mainframe computers, and so 09:34:34
5 you would submit your job to be processed on the 09:34:38
6 computer and there was always a big line of people 09:34:42
7 waiting to have their stuff done. 09:34:44
8 And so, you know, basically you can also 09:34:46
9 think of it being -- reflecting on last evening's 09:34:50
10 travel, you can also think of it as being a landing 09:34:54
11 strip and a bunch of airplanes flying around trying 09:34:56
12 to land. And so, you know, if they said -- that's a 09:35:00
13 congested system. 09:35:02

14 And so, basically, you would then say to 09:35:04
15 people, Well, how important is your job? And 09:35:06
16 everybody says, It's really urgent, I have got to be 09:35:08
17 at the head of the line. 09:35:10
18 Basically what I did in -- my thesis was 09:35:12
19 really motivated by what was going on more so with 09:35:16
20 computer systems, but then looking for more general 09:35:18
21 applicability. 09:35:18
22 Basically to say, well, can we design a 09:35:22
23 pricing mechanism such that you, as somebody who is 09:35:26
24 sitting in line there -- the pricing mechanism that 09:35:28
25 I have will be such that it will induce you to tell 09:35:32

33

1 me the truth about how important your job really is, 09:35:34
2 so I am going to vary the prices depending upon 09:35:36
3 where I put you in the line. 09:35:38
4 And so I wanted to set up -- my thesis was 09:35:42
5 really could you come up with what people would call 09:35:44
6 an incentive compatible pricing mechanism, that if I 09:35:48
7 got this pricing mechanism in place, it will get 09:35:50
8 everybody to tell me the truth about how urgent 09:35:52
9 their job is, and I will be able to process things 09:35:54
10 in the right fashion. 09:35:56
11 Q. Professor Dolan, if you met someone you didn't know 09:36:00
12 at a cocktail party and they asked what you did for 09:36:04
13 a living, what would you tell them? 09:36:06
14 A. I would tell them I am a marketing professor at 09:36:08
15 Harvard Business School. 09:36:10

16 Q. And if they asked you what your speciality was, what 09:36:12
 17 would you say? 09:36:12
 18 A. I would say, within the subfield of marketing, 09:36:16
 19 product policy and pricing. 09:36:18
 20 Q. Are you familiar with the four Ps? 09:36:20
 21 A. I am. 09:36:22
 22 Q. Could you state them for the record, please? 09:36:24
 23 A. Surely. I hope I can. Product, price, promotion, 09:36:28
 24 and place. 09:36:28
 25 Q. People in the field of marketing generally select 09:36:38

34

1 one of those four areas for specialization, do they 09:36:40
 2 not? 09:36:40
 3 A. No, I wouldn't say that that's true. 09:36:44
 4 Q. Have you selected one of those four areas for 09:36:46
 5 specialization? 09:36:48
 6 A. You know, I don't recall that I ever said, look, 09:36:54
 7 here are the four Ps, I am going to do these two. 09:36:58
 8 I mean, as I said a moment ago when you 09:37:00
 9 asked me the subquestion of -- when we got to the 09:37:04
 10 second question at the cocktail party, my particular 09:37:08
 11 areas of expertise within the field of marketing are 09:37:10
 12 pricing and product policy. So those are two 09:37:16
 13 elements of the four. 09:37:18
 14 But, you know, I think it's not so true 09:37:22
 15 nowadays that -- I think it probably was more true 09:37:26
 16 15 years ago, that if you said to somebody -- if you 09:37:28
 17 met somebody at a marketing convention and you said 09:37:32
 18 what do you do, they would give you, kind of, one of 09:37:34

19 the four Ps answer. 09:37:36
20 But I think what's happened, and 09:37:36
21 rightfully so, is that interesting business problems 09:37:40
22 cut across all of these things. So kind of saying, 09:37:46
23 well, I am an expert at X. Well, X is, you know, 09:37:50
24 usually part of a bigger problem. 09:37:52
25 So the interesting business problems of 09:37:54

35

1 the world, which is kind of what a lot of people 09:37:56
2 like to work on, tend not to be, you know, a little 09:38:02
3 narrow pricing problem or a little narrow promotion 09:38:04
4 problem. It's the whole marketing mix, the whole 09:38:06
5 set of activities taken together that make for 09:38:10
6 interesting business problems. 09:38:10
7 So I think less and less academics are 09:38:14
8 defining themselves by one of the four Ps. 09:38:16
9 Q. But nevertheless, academics label each other, don't 09:38:24
10 they; you are a pricing guy, somebody else might be 09:38:26
11 a distribution guy, another guy might be a personal 09:38:30
12 selling guy? 09:38:32
13 MR. O'FALLON: Objection, form. 09:38:34
14 A. Yeah, I mean -- yeah, people within the profession, 09:38:42
15 you know, yeah, people label themselves, but not 09:38:46
16 always by one of the four Ps. I mean, you know, 09:38:48
17 he's a quantitative guy, he's a qualitative guy, 09:38:52
18 he's an industrial guy, he's a consumer guy, he's a 09:38:56
19 general management guy. 09:38:56
20 So, yeah, I mean, within the profession, 09:39:00

21 you know, people tend to have their areas of 09:39:04
22 specialization that they publish in or they research 09:39:08
23 or that they teach; and, you know, a lot of people 09:39:12
24 become known as that. But there's lots of different 09:39:14
25 categories and labels that people use. 09:39:28

36

1 Q. An academic specialization can also be identified by 09:39:34
2 the journals that the research is published in, 09:39:38
3 can't it? 09:39:38
4 MR. O'FALLON: Objection. 09:39:40
5 A. I would have a hard time -- just looking at the 09:39:46
6 journals that it is in and inferring what their 09:39:50
7 specialization was? 09:39:52
8 Q. And the titles of the articles. 09:39:54
9 A. Well, of course, I mean, I would much prefer to -- I 09:39:58
10 think the best source is to talk to the person 09:40:02
11 themselves and say, you know, what do you do. 09:40:02
12 But, you know, to some extent, I mean, the 09:40:08
13 articles that the people have written tend to be 09:40:10
14 informative about what kind of interests them. And 09:40:14
15 also the kinds of courses that they teach tend to be 09:40:18
16 indicative of what they are interested in. 09:40:20
17 Q. So you would describe yourself as a pricing guy and 09:40:24
18 a product policy guy? 09:40:32
19 MR. O'FALLON: Objection, asked and 09:40:32
20 answered. 09:40:32
21 A. I would describe myself as a marketing guy. And 09:40:34
22 then if you want to pursue that question further and 09:40:36
23 say, okay, what is it within the field of marketing 09:40:40

24 that you consider your particular area of expertise, 09:40:42
25 I would say, well, I have kind of recently been 09:40:44

37

1 interested in -- you know, pricing and product 09:40:46
2 policy is kind of what I am interested in. But, I 09:40:48
3 mean, I teach marketing management; that's what I 09:40:52
4 want to teach. 09:40:54

5 Q. What are the subjects covered in marketing 09:40:56
6 management? 09:40:56

7 A. Marketing management, I mean, it's -- I mean, we 09:41:02
8 teach the basic process by which you create and 09:41:06
9 sustain value for customers. So that's part of 09:41:12
10 marketing management. 09:41:14

11 And then the other part is, well, having 09:41:16
12 created this value, you know, you then are entitled 09:41:20
13 to some of that value for yourself. And that's sort 09:41:22
14 of what pricing is about. 09:41:24

15 Q. And that value you are entitled to for yourself, 09:41:28
16 would you call that profit? 09:41:30

17 A. No. 09:41:32

18 Q. What would you call that? 09:41:32

19 A. Well, there's a value you are entitled to. That's 09:41:38
20 the perceived value which the customer places on 09:41:42
21 your product. 09:41:42

22 Now, there's two other things you have got 09:41:46
23 to think about before you get to profit. I mean, 09:41:48
24 one is there is some costs. All right? 09:41:50

25 So if I got you to pay me \$1,000 for this 09:41:54

1 fine computer because -- your perceived value of 09:41:58
2 that computer may be \$1,200. So that's what I have 09:42:02
3 done in marketing, is I created this perception of 09:42:04
4 the perceived value. But maybe I only charge you 09:42:06
5 \$1,000 for it. 09:42:06
6 So that's my revenue, but then I also had 09:42:08
7 a cost involved in making it and manufacturing it, 09:42:12
8 marketing it, and so forth. So you have to take out 09:42:16
9 the cost to get to anything like profit. 09:42:20
10 Q. And that's what businesses do, they are in the 09:42:26
11 business of trying to make a profit, right? 09:42:28
12 A. Some are. 09:42:30
13 Q. Which ones aren't? 09:42:30
14 A. Well, there's a whole slew of firms which we call 09:42:36
15 nonprofit organizations. And there are -- you know, 09:42:42
16 there's a whole big debate in the literature these 09:42:48
17 days about what do firms do; do they maximize 09:42:50
18 shareholder value, do they create profit, social 09:42:52
19 responsibility. 09:42:54
20 So I would say, you know, most firms that 09:42:58
21 I know would object to your characterizing their 09:43:02
22 objective as to make profit. 09:43:04
23 Q. What are the three major objectives of a 09:43:08
24 publicly-held, for-profit corporation, in your 09:43:14
25 opinion? 09:43:16

1 MR. O'FALLON: Objection, form. 09:43:18

2 A. It would vary greatly by firm, I would think. 09:43:20

3 Q. Let's take the automobile industry. What would you 09:43:24

4 say the three major corporate objectives of the 09:43:28

5 automobile companies are? 09:43:32

6 A. I mean, I guess the -- 09:43:40

7 MR. O'FALLON: Well, don't guess. There's 09:43:40

8 no reason to speculate. 09:43:44

9 THE WITNESS: Right, right.

10 BY MR. PURVIS:

11 Q. Would you agree that one of the goals would be to 09:43:46

12 make a profit? 09:43:48

13 MR. O'FALLON: Objection. 09:43:50

14 A. No, I would not necessarily agree that if we went 09:43:52

15 and pulled Ford's annual report out that they would 09:43:56

16 state there that, you know, our goals are one, two, 09:44:02

17 and three, and one of the three would be make a 09:44:04

18 profit. 09:44:04

19 Q. That wasn't my question. I want to know what you 09:44:06

20 believe are the three major goals of, let's take 09:44:08

21 Ford Motor Corporation. 09:44:10

22 MR. O'FALLON: That wasn't your most 09:44:12

23 recent question. So why don't you go back and 09:44:14

24 restate your most recent question. 09:44:14

25 MR. PURVIS: I am changing the question, 09:44:18

2 MR. O'FALLON: Well, so then it wasn't 09:44:18
3 your most recent question. 09:44:20
4 BY MR. PURVIS:
5 Q. Go ahead and answer. 09:44:22
6 A. I'll need you -- I am sorry. 09:44:22
7 Q. What would you say the three most important goals 09:44:26
8 for Ford Motor Company, for example, are? 09:44:30
9 MR. O'FALLON: Objection, foundation. 09:44:32
10 A. Yeah, I really don't have an answer to that. 09:44:40
11 Q. Don't you think it's likely one of the goals would 09:44:42
12 be to make a profit? 09:44:44
13 MR. O'FALLON: Objection, foundation, 09:44:46
14 calls for speculation. 09:44:48
15 A. I think, you know, in general -- you know, I haven't 09:44:52
16 studied Ford Motor Company in particular recently. 09:44:54
17 But, I mean, if you look at most publicly-traded 09:44:58
18 companies, they would say something about, you know, 09:45:00
19 one of our objectives is to maximize shareholder 09:45:06
20 value. 09:45:06
21 And maximizing -- you know, sort of a way 09:45:10
22 to get to maximizing shareholder value is through, 09:45:14
23 you know, profitability. And, you know, I mean, you 09:45:16
24 have got the whole thing about, well, short-term 09:45:18
25 profitability or am I building a franchise and so 09:45:22

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1 forth. 09:45:22
2 And so I think that's why to, you know, 09:45:24
3 focus on profitability, you know, it may well be 09:45:28
4 that in the short term, you know, somebody's 09:45:32

5 objective isn't to make profit, make a profit, but 09:45:36

6 it's to build their franchise. 09:45:38

7 Q. Which ultimately would most likely lead to future 09:45:40

8 profits, right? 09:45:42

9 MR. O'FALLON: Objection, foundation. 09:45:44

10 A. No, I would have to say I would not agree with the 09:45:46

11 "most likely" part of that statement. 09:45:48

12 Q. You've studied the structure of publicly-held 09:45:56

13 corporations, haven't you? 09:45:58

14 A. Could you clarify for me what that means? 09:46:02

15 Q. Who typically heads a publicly-held corporation? 09:46:06

16 A. Who typically heads a publicly-held corporation? 09:46:10

17 Q. The chief executive officer, wouldn't that be a 09:46:14

18 likely person who would be responsible for a 09:46:16

19 publicly-held corporation? 09:46:18

20 MR. O'FALLON: Objection, foundation. 09:46:20

21 A. I believe that's typical, that there is -- most 09:46:22

22 companies would have a CEO, right. 09:46:26

23 Q. Would you agree that the CEO has the ultimate 09:46:28

24 responsibility for the operations of that 09:46:30

25 corporation? 09:46:32

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1 MR. O'FALLON: Objection, calls for 09:46:34

2 speculation, lack of foundation. 09:46:40

3 A. Yeah, I don't know what the -- I am sure there's all 09:46:40

4 kinds of legal things on that which I am not 09:46:42

5 familiar with in terms of ultimate responsibility. 09:46:44

6 Q. Does Ford Motor Company study its customers' habits 09:47:00

7 and characteristics? 09:47:02

8 MR. O'FALLON: Objection, lack of 09:47:04

9 foundation, calls for speculation. 09:47:06

10 A. I am not aware of -- I am not inside Ford Motor 09:47:16

11 Company at the moment, so I couldn't say for sure. 09:47:18

12 Q. As you sit here today, do you think Ford Motor 09:47:20

13 Company studies its customers? 09:47:24

14 MR. O'FALLON: Objection, calls for 09:47:26

15 speculation, lack of foundation. 09:47:30

16 A. I would be surprised if Ford Motor Company were not 09:47:36

17 conducting some studies of their customer base and 09:47:40

18 potential customer base; that would surprise me if I 09:47:44

19 found that to be the case. 09:47:46

20 Q. I'm sorry. You would be surprised if they didn't 09:47:48

21 study their customers and potential customers? 09:47:52

22 A. I would be surprised that they were not conducting 09:47:54

23 studies of that type, yes, I would be surprised. 09:47:58

24 Q. Most major corporations conduct studies of their 09:48:00

25 customers and potential customers, don't they? 09:48:02

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1 A. I can't go as far as making that statement. 09:48:06

2 Q. In marketing don't you learn that one of the things 09:48:10

3 you have to know is who your potential customers are 09:48:12

4 for your product? 09:48:14

5 A. One of the things we teach in marketing is that 09:48:18

6 you -- the foundation of a good marketing plan is to 09:48:24

7 understand the behavior of your customers and your 09:48:28

8 target customers, right, that's -- we teach it; I 09:48:32

9 hope they learn it. 09:48:32

10	Q.	That's fundamental, isn't it?	09:48:34
11	A.	Yeah, we could agree on that. That's the basics,	09:48:38
12		that's where we start from.	09:48:40
13	Q.	There are courses entitled "marketing research,"	09:48:42
14		aren't there?	09:48:44
15	A.	Not at Harvard Business School. But at a number of	09:48:46
16		other places there are, yes.	09:48:48
17	Q.	Have you ever taken a course in marketing research?	09:48:50
18	A.	Yes.	09:48:50
19	Q.	Where did you take that?	09:48:52
20	A.	University of Rochester.	09:48:52
21	Q.	Was that in your doctoral program?	09:48:56
22	A.	Right.	09:48:56
23	Q.	What did you study in that course?	09:48:58
24	A.	Basically, you know, what are the set of research	09:49:02
25		tools that would be available to you to study your	09:49:10

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1		customers and to some extent your competitors. But	09:49:14
2		it was basically about, you know, how do you go	09:49:18
3		about assessing customers and studying customers,	09:49:24
4		yes. So there are courses on that, right.	09:49:28
5	Q.	Major publicly-held corporations generally have	09:49:30
6		market research departments, don't they?	09:49:32
7	A.	I mean, I don't know that they call -- they conduct	09:49:38
8		an activity. I don't know about the "most" part of	09:49:44
9		it. But, I mean, I think, you know, many large	09:49:54
10		companies would have a market research function.	09:49:58
11		I think what my perception of what's	09:50:02

12 happening is that less and less is it a separate 09:50:04
13 department, that market research has kind of moved 09:50:08
14 over to get more integrated in with the business 09:50:10
15 activities of the company, rather than, you know, 09:50:12
16 have the market research people sort of off studying 09:50:16
17 something that really isn't integrated in. 09:50:20
18 So I don't know that -- I mean, I think 09:50:24
19 the department part of it is not clear to me. But, 09:50:28
20 I mean, substantively do they engage in activities 09:50:30
21 that would, you know, correspond to doing research 09:50:34
22 on their customers? I would say many do. 09:50:36
23 Q. When we talked about specialities, that you're a 09:50:42
24 pricing and policy guy, there are people who are 09:50:46
25 market research guys, aren't there? 09:50:48

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1 A. Again, you know, that's something that -- I think 09:50:56
2 less and less people call themselves that because, 09:51:02
3 you know, we all do market research. I mean, I have 09:51:06
4 taught courses in market research. 09:51:08
5 We call it now -- now we call it marketing 09:51:10
6 decision support systems rather than market 09:51:12
7 research, to suggest that, you know, you have got to 09:51:16
8 tie it into a decision. 09:51:16
9 But, you know, there were sort of -- if 09:51:22
10 you go back to marketing twenty years ago, I mean, 09:51:24
11 you would look at some people and say, oh, he's a 09:51:26
12 market research guy. 09:51:28
13 I don't think that's happening anymore 09:51:28
14 because -- it's the same thing going on in 09:51:32

15 business -- you have got to have the research really 09:51:34
16 tied to particular business problems. 09:51:36
17 Q. But regardless of the title, there are professionals 09:51:40
18 who devote their careers to market research for 09:51:44
19 publicly-held corporations, correct? 09:51:46
20 MR. O'FALLON: Objection, lack of 09:51:48
21 foundation. 09:51:48
22 A. You mean academics? 09:51:50
23 Q. No. People in the corporations who devote their 09:51:54
24 careers to market research. 09:51:58
25 MR. O'FALLON: Objection, lack of 09:51:58

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1 foundation, overly broad. 09:52:02
2 A. Yeah. Could I have the question read back so I have 09:52:04
3 got the most or the many or wherever we are? 09:52:08
4 MR. PURVIS: Go ahead. 09:52:10
5 (Question on page 45, line 17
6 read back by the court reporter.) 09:52:24
7 A. I would say there are some individuals who have made 09:52:30
8 a career in market research functions in 09:52:34
9 publicly-held corporations, yes. 09:52:36
10 Q. Your CV reflects a great deal of consulting work. 09:52:40
11 Have you ever consulted with a corporation on market 09:52:42
12 research? 09:52:44
13 A. Well, I have consulted with companies on business 09:52:54
14 problems which needed market research information, 09:53:00
15 needed information about their customers, to answer. 09:53:06
16 Q. And you have taught courses in marketing research? 09:53:08

17 A. Right. I mean, we didn't -- as I said, at the -- 09:53:12
18 Q. You changed the name? 09:53:14
19 MR. O'FALLON: Characterizing his answer. 09:53:16
20 A. As I said, you know, my course that I taught in the 09:53:18
21 second year of the MBA program at Harvard called 09:53:20
22 marketing decision support systems was, you know, 09:53:24
23 was basically about the research techniques you need 09:53:30
24 to support marketing decisions. 09:53:32
25 Q. Where was your job after you graduated with your 09:53:42

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1 Ph.D.? 09:53:42
2 A. At the University of Chicago. 09:53:42
3 Q. What did you teach at the University of Chicago? 09:53:46
4 A. I had a joint appointment in -- as noted there, I 09:53:50
5 had a joint appointment in management science and 09:53:52
6 marketing, so half -- I spent about half the time 09:53:54
7 teaching management science, which is sort of the 09:53:56
8 University of Chicago's name for operations 09:53:58
9 research, and half my time teaching marketing. 09:54:00
10 Q. What courses did you teach in marketing at Chicago? 09:54:04
11 A. Let's see. I taught marketing management, 09:54:08
12 advertising, marketing strategy, marketing models, 09:54:18
13 some doctoral seminars. I am trying to think. 09:54:26
14 That's all -- those are the ones I can think of as I 09:54:30
15 sit here at the moment. 09:54:30
16 Q. What textbook did you use when you taught the 09:54:34
17 advertising course at the University of Chicago? 09:54:36
18 A. Aaker and Meyers. 09:54:38
19 Q. Is that the only advertising textbook you have ever 09:54:40

22 A. And then I decided at that point that -- you know, I 09:56:30
23 had been talking to Harvard, and I decided to leave 09:56:34
24 to go to Harvard. 09:56:34
25 Q. But being promoted to associate professor would not 09:56:40

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1 have conferred tenure on you at Chicago; is that 09:56:42
2 correct? 09:56:44
3 A. Right. Under the Chicago system, Chicago is a place 09:56:46
4 where you come up for tenure usually like seven or 09:56:48
5 eight years after you have been there and it's -- I 09:56:52
6 am pretty sure it's when you come up for full 09:56:56
7 professor, that's tenure. 09:56:58
8 So when I was reviewed for associate 09:57:00
9 professor in my fourth year there, that was -- the 09:57:04
10 only result of that could be to be promoted to 09:57:10
11 associate professor without tenure or be asked to 09:57:12
12 leave. 09:57:12
13 Q. On page 2 of your CV you list publications and the 09:57:14
14 first subcategory is books, correct? 09:57:18
15 A. Correct. 09:57:18
16 Q. Which book would you say you are most noted for 09:57:22
17 authoring? 09:57:22
18 A. I don't know. I mean, I don't know. I honestly 09:57:44
19 don't -- I haven't, kind of, asked anybody that. I 09:57:50
20 hope it will eventually become number 1 there, but 09:57:52
21 it's only been out a little while, so... 09:57:54
22 Q. Are you referring to number 1 on your list? 09:57:56
23 A. Right. 09:57:56
24 Q. Is that a textbook? 09:57:58

25 A. No, that's not. That's really -- that's a book for 09:58:04

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1 the practitioner market. I hope that some people 09:58:08
2 will adopt it for use in a classroom, but it was 09:58:10
3 really written strictly -- it was written with a 09:58:14
4 practitioner market in mind. And hopefully it will 09:58:18
5 migrate over into the classroom, but it was not 09:58:22
6 designed for that purpose the way that some of the 09:58:24
7 other ones were. 09:58:26

8 Q. By the title, the primary subject of that book 09:58:28
9 appears to be pricing, correct? 09:58:30

10 A. Correct. 09:58:30

11 Q. Again, that's your speciality, pricing? 09:58:32

12 A. That's one of my particular -- I think of that as 09:58:36
13 one of my particular areas of expertise within the 09:58:40
14 marketing management field. But again, you know, I 09:58:44
15 consider myself a marketing guy. 09:58:44

16 Q. When you write a book, do you conduct thorough 09:58:50
17 research? 09:58:50

18 A. Yes, in my opinion I do. 09:59:00

19 Q. As a social scientist, that's kind of what you are 09:59:04
20 supposed to do, thoroughly research a topic if you 09:59:08
21 write about it? 09:59:08

22 A. Social scientist? Let's see. Well, I don't know. 09:59:16
23 I mean, it's what I do. I mean, if I am going to 09:59:20
24 write down something, I like to have researched it 09:59:28
25 and really believe what it is I am writing down. 09:59:30

1 So, yeah, I will do the research that's 09:59:32
2 necessary to help me develop the points I think I 09:59:38
3 should make and the argument behind them. 09:59:42
4 Q. Do you consider yourself a social scientist? 09:59:46
5 A. Well, in kind of, you know, casual conversation, 09:59:56
6 no. I mean, it would be a long way down the list 09:59:58
7 to -- it's not a term I use to describe myself. I 10:00:04
8 mean, I am sort of trained as an economist and a 10:00:06
9 marketer. And if somebody wants to call that a 10:00:10
10 social scientist, I guess that's okay with me. 10:00:12
11 But if you ask me to write a little 10:00:16
12 paragraph describing who I am, I wouldn't say -- I 10:00:22
13 don't think of myself that way. I guess some other 10:00:24
14 people might call me a social scientist because of 10:00:26
15 what I do and stuff, but I don't use that 10:00:28
16 terminology to refer to myself. 10:00:36
17 Q. In your graduate school training were you taught how 10:00:36
18 to research? 10:00:38
19 A. Yeah. I mean, that's a big part of a doctoral 10:00:40
20 program, is to develop people's research 10:00:44
21 capabilities, right. 10:00:44
22 Q. Would you agree that thoroughness is a very 10:00:48
23 important factor in conducting research in your 10:00:52
24 field? 10:00:54
25 A. Well, you know, there's different kinds of 10:01:10

1 research. 10:01:10

2 I mean, if you look at -- as an example, 10:01:16

3 if you look at somebody like Ted Levitt from Harvard 10:01:20

4 Business School who had written all kinds of 10:01:22

5 influential articles, was his research underlying it 10:01:26

6 really thorough? Well, I don't know. I mean, he 10:01:32

7 really knew his way around, so... 10:01:34

8 I mean, I guess it's generally better to 10:01:38

9 be thorough rather than not thorough. So I am not 10:01:40

10 quite sure. 10:01:42

11 Q. When you do research, do you try to be thorough? 10:01:44

12 A. As I said a while ago, you know, with respect to the 10:01:54

13 book, yeah. I mean, I try to develop -- I do the 10:02:00

14 research that I need to do to be able to state what 10:02:06

15 I am stating. 10:02:08

16 So, yeah, I generally think of 10:02:10

17 thoroughness as one of the attributes that I would 10:02:12

18 like to characterize my research activity, yes. 10:02:16

19 Q. Do you try to be accurate when you do research? 10:02:18

20 A. I do try to be accurate, I do try to be correct when 10:02:24

21 I state my research results. 10:02:26

22 Q. If you state something that is incorrect in your 10:02:28

23 research results, that casts doubts on your work, 10:02:32

24 does it not? 10:02:34

25 MR. O'FALLON: Objection, form. 10:02:38

1 A. Can we switch this -- do we want to switch this to a 10:02:44

2 hypothetical? 10:02:46

3 Q. Let's just stay with the question I asked and see if 10:02:48
4 you can answer it. 10:02:50
5 A. Could I have the question asked again? 10:02:50
6 (Question on page 52, line 22
7 read back by the court reporter.) 10:03:02
8 MR. O'FALLON: Note my objection. 10:03:04
9 A. Well, again, I don't know that that has happened, so 10:03:14
10 I can't say specifically. But I would say, you 10:03:18
11 know, hypothetically, I mean, if anyone is 10:03:22
12 publishing or stating things which prove to be 10:03:24
13 incorrect, that generally does not serve their 10:03:30
14 reputation well. 10:03:30
15 Q. Have you seen research results published by others 10:03:36
16 that were inaccurate? 10:03:38
17 A. Yeah, I have seen -- I mean, sure, I have seen 10:03:44
18 research results published that I disagree with, 10:03:46
19 yeah. 10:03:46
20 Q. Harvard Business School uses the case method, does 10:03:52
21 it not? 10:03:52
22 A. That's our primary method of instruction. We use 10:03:56
23 other methods as well, but we're, you know, I think, 10:04:02
24 well-known among business schools for our heavy 10:04:04
25 reliance on the case method. 10:04:06

1 Q. Could you very briefly describe the case method for 10:04:08
2 us? 10:04:08
3 A. Sure. I mean, basically what we -- the case method 10:04:14
4 would be we typically go to companies, sometimes we 10:04:18
5 write them from the library, but, I mean, more often 10:04:22

6 than not we go and seek the cooperation of a firm in 10:04:28
7 describing a business problem that this firm has. 10:04:28
8 And then we bring -- write that up, as 10:04:34
9 some of this lists, you know, just following my 10:04:36
10 books here. We write that up and we bring that into 10:04:38
11 the classroom and we discuss what's -- typically 10:04:44
12 there's a decision that the firm ought to do X or Y 10:04:48
13 or Z and we ask the students, you know, what they 10:04:52
14 think the firm ought to do. 10:04:54
15 And so we look at very specific instances 10:04:58
16 of a particular firm and then we try to go from 10:05:00
17 those specific instances to more general principles. 10:05:04
18 Q. Approximately how many pages long would a typical 10:05:06
19 case be? 10:05:08
20 A. Well, it varies. You know, the Eastman Kodak on 10:05:14
21 there, number 12 under my cases, is like probably 4 10:05:18
22 or 5 pages long. And I think Sealed Air Corporation 10:05:26
23 is maybe 16, 18. 10:05:30
24 Our general idea is we like to try to keep 10:05:34
25 them under 20 because we typically are asking the 10:05:40

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1 students to read them for a particular -- one 10:05:42
2 particular class. 10:05:42
3 So you don't like to write a 40-page case 10:05:46
4 that somebody has to spend five hours reading and 10:05:50
5 then really doesn't have time to even think about 10:05:52
6 it. 10:05:52
7 Q. And the 15 cases referred to on page 2 and at the 10:05:56

8 top of page 3 on your CV, those are ones you 10:05:58

9 personally wrote? 10:06:00

10 A. That's correct. I have a co-author on a couple of 10:06:02

11 them as listed there. But, yeah, those are ones 10:06:04

12 that I personally wrote. 10:06:06

13 Q. And in each of those instances did you go to the 10:06:06

14 corporations and gather the information you needed? 10:06:10

15 A. No. 10:06:12

16 Q. Which ones did you not go to the corporation? 10:06:16

17 A. Okay. I did not go on number 1, Milford Industries; 10:06:22

18 number 4, Federated Industries; number 9, the 10:06:34

19 strategic industry model; number 12, Eastman Kodak; 10:06:44

20 number 14, Nike in the 1990s, A and B. 10:06:48

21 Q. When you do not go to the corporation for 10:06:50

22 information to write these cases, how do you gather 10:06:52

23 the information? 10:06:52

24 A. Well, some of it is out of the library. For 10:07:00

25 example, the Eastman Kodak one I basically did from 10:07:06

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1 secondary sources. Nike I talked to the people on 10:07:10

2 the phone and they sent me some things and I also 10:07:14

3 did -- got things out of the library. 10:07:18

4 Milford Industries was basically something 10:07:24

5 that we, more or less, made up on the basis of sort 10:07:30

6 of a conglomeration of industry knowledge kind of 10:07:34

7 thing, so there really isn't any particular company 10:07:36

8 that's Milford Industries. 10:07:38

9 Q. In writing these cases, have you ever asked lawyers 10:07:42

10 for any of these companies to give you information? 10:07:48

11	A.	I don't specifically recall ever asking people from	10:07:56
12		the legal department to give me any information.	10:07:58
13		MR. PURVIS: Do you want to take a break?	10:08:06
14		We have been going about an hour.	10:08:08
15		MR. O'FALLON: Sure.	10:08:08
16		MR. PURVIS: Let's take a short break.	10:08:10
17		(Break taken.)	10:18:10
18		(Defendants' Exhibits 3002-3006	
19		marked for identification.)	10:20:02
20		MR. PURVIS: Let's go on.	10:20:04
21	BY MR. PURVIS:		
22	Q.	Professor Dolan, page 4 of your CV, which has been	10:20:10
23		marked as Deposition Exhibit 3301, lists your	10:20:16
24		journal articles; is that correct?	10:20:18
25	A.	That's correct.	10:20:18

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1	Q.	And there are 21 of them listed?	10:20:20
2	A.	That's correct.	10:20:20
3	Q.	Is that the sum total of your publications during	10:20:26
4		your professional career?	10:20:28
5	A.	In journals, yes.	10:20:30
6	Q.	When you conducted research for the publication of	10:20:34
7		these articles, were you thorough?	10:20:38
8	A.	Well, as I said a while ago, I believe that	10:20:46
9		thoroughness would characterize my general research	10:20:50
10		activities.	10:20:50
11	Q.	And were you accurate in your research?	10:20:52
12	A.	I believe so.	10:20:54

13	Q.	On page 5 of your CV there are listed research and	10:21:04
14		editorial positions. Do you see that in the middle?	10:21:08
15	A.	I do.	10:21:08
16	Q.	Were you removed as a member of the editorial review	10:21:12
17		board for Marketing Science in 1988?	10:21:14
18	A.	Well, I changed my position from being a member of	10:21:22
19		the editorial review board to being the editor of a	10:21:28
20		section.	10:21:28
21	Q.	Which section were you the editor of?	10:21:32
22	A.	Well, just as it says there, the field studies	10:21:34
23		section.	10:21:34
24	Q.	What is the field studies section?	10:21:36
25	A.	Basically what Marketing Science was trying to do	10:21:40

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1		with the journal at that time was to try to publish	10:21:42
2		more articles that related to actual business	10:21:48
3		problems of firms.	10:21:50
4		And so they enlisted me to kind of head up	10:21:56
5		this section to try to source some articles, you	10:22:00
6		know, to say, number one, we as a journal, we're	10:22:04
7		open to articles that have managerial utility to	10:22:06
8		them that were about specific firms. And so I	10:22:10
9		headed that up.	10:22:10
10	Q.	Were any of the specific firms that were studied in	10:22:16
11		the field study section tobacco companies?	10:22:18
12	A.	I don't believe so, no.	10:22:20
13	Q.	Prior to your retention in this litigation, have you	10:22:26
14		ever studied any of the tobacco companies who are	10:22:28
15		defendants in this litigation?	10:22:30

16 A. Well, let's see. Studied? It's a little hard to 10:22:42
17 know what that... I mean, certainly I have taught 10:22:44
18 case studies about tobacco companies. There are 10:22:50
19 some references to tobacco companies in my book 10:22:52
20 that, you know, predate any involvement in this 10:22:56
21 case. But to -- so, I mean, I studied them; yeah, I
22 guess I have studied them. 10:23:08
23 Q. Which book were you referring to in that last 10:23:10
24 answer? 10:23:10
25 A. The "Power Pricing" book. 10:23:12

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1 Q. The most recent book? 10:23:14
2 A. That's correct. 10:23:14
3 Q. Are you a reviewer for any journals? 10:23:20
4 A. I am currently a reviewer for the Journal of 10:23:22
5 Marketing, right as it says down there, right. 10:23:26
6 Q. How many manuscripts have been sent to you during 10:23:30
7 the last year by the Journal of Marketing for your 10:23:32
8 review? 10:23:32
9 A. Just a couple. 10:23:36
10 Q. What were the subjects of those? 10:23:38
11 A. Let's see. One was marketing -- something about a 10:23:48
12 marketing/strategy-making process was one. And I 10:23:54
13 forget what the other one was. 10:23:56
14 Q. I want to direct your attention to Attachment B to 10:24:02
15 this exhibit. I understood from your earlier 10:24:06
16 testimony that, in fact, the list of your expert 10:24:08
17 witness work may be longer than the seven listed 10:24:12

18	here; is that correct?	10:24:14
19	A. "Expert witness work" meaning things -- this is a	10:24:18
20	list of things in which I gave testimony at either	10:24:22
21	trial or a deposition. Do you mean was I involved	10:24:28
22	in other expert witness --	10:24:28
23	Q. Right, prior to 1989.	10:24:32
24	A. Oh, prior to '89. No, no.	10:24:36
25	Q. So this is a complete list of all your trial	10:24:36

1	consultancies?	10:24:38
2	A. This would be a list of the engagements which I had	10:24:42
3	which resulted in either a deposition or trial	10:24:44
4	testimony, correct.	10:24:44
5	Q. How many times have you been retained in litigation	10:24:52
6	matters when there was not a deposition or trial?	10:24:58
7	A. Let's see. I would be estimating.	10:25:08
8	Q. That's fine.	10:25:10
9	A. Which is not guessing, but estimating. I would say	10:25:14
10	maybe another six or seven times, something like	10:25:20
11	that.	10:25:20
12	Q. You were compensated for your time in the litigation	10:25:28
13	matters, weren't you?	10:25:30
14	A. You are referring to all of them now or the	10:25:34
15	ones --	10:25:34
16	Q. Yes, all of them.	10:25:36
17	A. Yeah; yes, I was.	10:25:40
18	Q. And do you charge by an hourly rate?	10:25:42
19	A. I do.	10:25:42
20	MR. O'FALLON: It's my understanding	10:25:44

21 that --
22 MR. PURVIS: I am not going to inquire 10:25:48
23 into an amount. I just wanted to get the 10:25:50
24 structure. 10:25:52
25

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1 BY MR. PURVIS:
2 Q. With respect to the first item, Polaroid vs. Kodak, 10:25:56
3 what was the general nature of your trial testimony 10:26:00
4 in 1989? 10:26:00
5 A. Well, let's see. The basic question which I 10:26:04
6 addressed is if you looked at the total sales of 10:26:12
7 instant cameras by Kol -- I used to make that 10:26:18
8 mistake greatly, "Kolaroid." 10:26:20
9 If you looked at the total sales of 10:26:24
10 instant cameras by Polaroid and Kodak together, how 10:26:30
11 many of those sales which they together made during 10:26:32
12 the period of the infringement could Polaroid have 10:26:34
13 made if Polaroid were alone in the marketplace; that 10:26:36
14 was the basic question which I addressed. 10:26:38
15 Q. And this was a patent infringement case? 10:26:40
16 A. It was. 10:26:42
17 Q. And how would you describe the subject matter of 10:26:44
18 your testimony in a label, if you will? 10:26:48
19 A. Well, basically I examined the -- I assessed the 10:26:52
20 marketing capabilities of Polaroid to enable me to 10:27:00
21 answer that -- on a worldwide basis to enable me to 10:27:04
22 answer that question. 10:27:04

23 Q. With respect to the second consultancy, Honeywell 10:27:08
24 vs. Minolta in 1991, was that also a patent 10:27:14
25 infringement case? 10:27:14

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1 A. Yes. 10:27:16
2 Q. Was the nature of your testimony similar to that 10:27:18
3 which you did for Polaroid? 10:27:20
4 A. No, it was different. Because, you know, with 10:27:24
5 Polaroid and Kodak, these were two players who were 10:27:28
6 in the marketplace and Honeywell did not market 10:27:30
7 cameras, so it was different. 10:27:32
8 Q. Could you describe the nature of your testimony in 10:27:34
9 that case? 10:27:36
10 A. Sure. Basically what Minolta, you know, infringed 10:27:42
11 on was -- the feature that they were able to offer 10:27:44
12 in their camera via the infringement was the 10:27:48
13 autofocus feature. 10:27:48
14 So sort of a short summary of my testimony 10:27:52
15 would be to discuss the importance of the autofocus 10:27:56
16 feature in driving the sales of Minolta cameras. 10:28:02
17 Q. The third litigation work you did was SmithKline 10:28:08
18 Beecham vs. Mellon. Was that a patent infringement 10:28:12
19 case? 10:28:12
20 A. Well, let's see. I'm not sure. Why don't I -- 10:28:18
21 yeah, I guess it was a patent infringement case, I 10:28:22
22 mean basically.
23 Q. Could you briefly describe the nature of your 10:28:26
24 testimony in that case? 10:28:26
25 A. Right. This was about Aquafresh toothpaste and it 10:28:32

1 had something to do with the striping, the 10:28:38
2 technology for putting stripes in Aquafresh 10:28:42
3 toothpaste and how important those stripes were in 10:28:46
4 generating demand for Aquafresh toothpaste. 10:28:50
5 Q. The fourth item, Gillette vs. Scripto, what was the 10:28:54
6 general nature of your testimony there? 10:28:56
7 A. That was erasable ink pens and that was Scripto 10:29:00
8 violating Gillette's patents on erasable ink pens 10:29:06
9 and, you know, basically looking at the marketing 10:29:10
10 conduct of Scripto and describing the sales that 10:29:12
11 they had and how important that feature was and so 10:29:14
12 forth. 10:29:14
13 Q. And the fifth item is Honeywell vs. Fuji Photo 10:29:20
14 Film. 10:29:20
15 A. Right. 10:29:22
16 Q. Could you describe the nature of that litigation and 10:29:24
17 your testimony? 10:29:24
18 A. It was basically the same issue as in item number 2, 10:29:26
19 Honeywell vs. Minolta. It was, you know, how 10:29:34
20 important was the autofocus feature to Fuji in 10:29:34
21 generating sales of Fuji cameras, 35 millimeter 10:29:38
22 cameras. 10:29:40
23 Q. And the next one is Glaxo vs. Genpharm. 10:29:42
24 A. Right. 10:29:44
25 Q. What was the nature of that? 10:29:46

1 A. That was a case in which there was a patent issue, 10:29:52
2 where it was about Glaxo's marketing of Zantac. And 10:29:56
3 so basically what I did was I described the 10:30:00
4 marketing activities of Glaxo, the full set of 10:30:06
5 marketing activities, and really assessed the 10:30:10
6 importance of the drug itself in the success that 10:30:14
7 Glaxo had had in the marketplace. 10:30:16
8 Q. Was Zantac a prescription medicine? 10:30:22
9 A. At that time it was, yes. 10:30:24
10 Q. And the last one on the list is Lotus vs. Borland. 10:30:28
11 A. Right. 10:30:28
12 Q. Could you describe the nature of that litigation and 10:30:32
13 your involvement? 10:30:32
14 A. Right. I worked for Lotus, and the basic issue 10:30:36
15 was -- this was when Borland brought out Quattro and 10:30:40
16 Quattro Pro and put Lotus's 1-2-3 command structure 10:30:46
17 in their software, in the Borland software. 10:30:52
18 And so the issue was how important was the 10:30:54
19 copying of the Lotus 1-2-3 command structure into 10:31:00
20 the Borland product in generating sales of Quattro 10:31:02
21 and Quattro Pro. 10:31:04
22 Q. What classes are you going to be teaching in this 10:31:06
23 upcoming semester? 10:31:08
24 A. I am going to be teaching marketing management in 10:31:12
25 the first year of the MBA program. 10:31:14

1 Q. What textbook will you be using? 10:31:14

2 A. There won't be any textbook. 10:31:18

3 Q. Will you use a case book? 10:31:18

4 A. It won't be a case book. It will be a case packet 10:31:22

5 of, you know, a bunch of individual cases. 10:31:26

6 Q. Does Harvard have cases involving any of the 10:31:32

7 cigarette companies? 10:31:34

8 A. Yes. 10:31:34

9 Q. Which ones, if you can recall? 10:31:38

10 A. I can only recall -- I can only mention one 10:31:42

11 specifically. You know, I haven't looked to see if 10:31:46

12 we have more; we may well have more. But there is 10:31:48

13 one on Philip Morris and Marlboro, the incidents 10:31:54

14 around Marlboro Friday. 10:31:56

15 Q. Is that the reference in your book to a tobacco 10:31:58

16 company, Marlboro Friday? 10:32:02

17 A. Let's see. I think no. I mean, I believe the data 10:32:08

18 I report in the book were taken from -- I mean, I 10:32:14

19 saw it in the case and then the case writers got it 10:32:16

20 from somewhere else, but it wasn't referred -- the 10:32:20

21 book, it wasn't about Marlboro Friday. Am I clear? 10:32:26

22 Q. I believe so. 10:32:26

23 A. I kind of looped. Do you want to try it again or 10:32:30

24 have you got it? 10:32:32

25 Q. I got it. Do you personally use the Philip Morris 10:32:36

1 case in teaching any of your classes at Harvard? 10:32:40

2 A. I have. I will not this time, but I have in the 10:32:42

3 past. 10:32:44

4 Q. What is the general subject matter of that case? 10:32:46

5 A. The general subject matter of the case is really 10:32:50

6 events around Marlboro Friday where, as I am sure 10:32:54

7 you know, Philip Morris cut the price of Marlboros 10:32:58

8 significantly. And the question for the students 10:33:02

9 is, well, was this good, was this bad, good 10:33:06

10 marketing, not so good, what do you think. That's 10:33:08

11 the basic issue. 10:33:10

12 Q. Would you consider that a pricing case? 10:33:12

13 A. No. 10:33:12

14 Q. How would you describe it? 10:33:16

15 A. I think of it as a, you know, general marketing 10:33:18

16 management -- brand management case. It's got a 10:33:22

17 pricing aspect to it, obviously, but it's, you 10:33:24

18 know -- I mean, the thing about it, you know, you 10:33:28

19 really can't detach pricing from an understanding of 10:33:32

20 the whole marketing strategy. So, I mean, I think 10:33:34

21 it was a fairly broad case leading to that specific 10:33:38

22 issue. 10:33:40

23 Q. Other than the Aaker book on advertising, can you 10:33:44

24 identify for me any other textbooks that you 10:33:48

25 consider authoritative in the field of advertising? 10:33:52

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1 MR. O'FALLON: Objection, asked and 10:33:52

2 answered. 10:33:54

3 A. Well, I am not sure I labeled Aaker and Meyers as 10:33:58

4 authoritative, but, I mean, in my opinion that's 10:34:02

5 the -- at the time when I was in the market for an 10:34:06

6 advertising management textbook to use, having 10:34:10

7	reviewed the ones that were out there at the time,	10:34:12
8	that was, you know, what I would say was the best	10:34:16
9	one.	10:34:16
10	So, I mean, could I give you a list of	10:34:18
11	ones I consider authoritative? No, I couldn't.	10:34:22
12	Q. When was the last time you used the Aaker textbook?	10:34:30
13	A. Used it in a course?	10:34:34
14	Q. Yes.	10:34:34
15	A. Well, it would be sometime prior to my coming to	10:34:36
16	Harvard Business School, so it would be, you know,	10:34:38
17	sometime before 1980, in that '76 to '80 time frame	10:34:44
18	when I was at the University of Chicago.	10:34:46
19	Q. You haven't taught a course in advertising since you	10:34:48
20	were at the University of Chicago?	10:34:50
21	A. I have taught courses -- you know, marketing	10:34:54
22	management courses of which there was an advertising	10:34:56
23	chunk. But at Harvard, you know, reflecting on our	10:35:02
24	basic case study approach, we typically do not	10:35:04
25	assign textbooks for our courses.	10:35:06

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1	Q. Have you ever taken a course in consumer behavior?	10:35:10
2	A. Yeah, I took a doctoral seminar in consumer	10:35:14
3	behavior.	10:35:16
4	Q. That would have been in 19 -- prior to 1979?	10:35:20
5	A. Right, right, that would be -- we can pin it down	10:35:26
6	closer than that. That would have been at the time	10:35:32
7	I was at the University of Rochester, so that would	10:35:34
8	be prior to 1977.	10:35:34

9 Q. Have you ever taught a course in consumer behavior? 10:35:36

10 A. I taught a piece of a course in consumer behavior. 10:35:40

11 The last time we offered a doctoral seminar in 10:35:44

12 consumer behavior, there were probably three of us 10:35:50

13 that were responsible for delivering that course. 10:35:52

14 Q. When was that? 10:35:54

15 A. Two or three years ago. 10:35:58

16 Q. I don't suppose you used a textbook in that class, 10:36:02

17 did you? 10:36:02

18 A. There was -- let's see. There was a textbook of 10:36:10

19 readings. I forget what the title of it was, but 10:36:14

20 there's sort of a -- one of these big compendiums 10:36:18

21 of, you know, recent research articles on consumer 10:36:20

22 research. I forget who the authors were. 10:36:26

23 Q. Would a record of that textbook be available at 10:36:28

24 Harvard? 10:36:30

25 A. I doubt it. 10:36:36

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1 Q. Could you describe the field of consumer behavior 10:36:42

2 for me? 10:36:42

3 A. Sure. It's a -- I mean, it's an element, it's a 10:36:50

4 part of the marketing area where people really try 10:36:54

5 to understand how consumers sort of make their 10:37:00

6 purchase decisions and how they utilize their 10:37:06

7 products and how they derive customer satisfaction. 10:37:08

8 Q. Would you agree with me that consumer 10:37:10

9 decision-making is very complex? 10:37:12

10 MR. O'FALLON: Objection, form, vague. 10:37:14

11 A. It can be. There are some product categories in 10:37:18

12 which the decision-making process of a consumer, I 10:37:24
13 think, is complex. 10:37:26
14 Q. Would you agree with me that consumers' decisions 10:37:30
15 can be influenced by many different factors? 10:37:38
16 MR. O'FALLON: Objection, form, vague. 10:37:40
17 A. Well, I would agree with you that a consumer's 10:37:50
18 decision-making process can be influenced by a 10:37:52
19 number of factors. 10:37:54
20 Q. Would you also agree with me that many of the 10:37:54
21 factors which influence consumers' decisions are 10:37:58
22 completely outside the control of the marketer? 10:38:02
23 MR. O'FALLON: Objection, form, 10:38:04
24 foundation. 10:38:06
25 A. First of all, I didn't say there were many. You 10:38:10

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1 keep using the term "many." I said there are a 10:38:12
2 number. 10:38:12
3 But some of the factors which influence 10:38:16
4 consumers' decision-making are outside the -- in 10:38:22
5 general, some of the factors which influence 10:38:24
6 consumer decision-making can be outside the control 10:38:26
7 of the firm marketing the product. 10:38:30
8 Q. Which factors can the firm marketing the product use 10:38:34
9 in attempting to influence a consumer's decision? 10:38:40
10 MR. O'FALLON: Objection, vague, lack of 10:38:42
11 foundation. 10:38:42
12 A. Well, the way we generally think about it in 10:38:44
13 marketing is, you know, the control variables of the 10:38:50

14	firm are -- you know, sort of go back to an expanded	10:38:58
15	four Ps listing of, you know, what are the	10:39:00
16	mechanisms that the firm can use to influence the	10:39:06
17	customer value.	10:39:06
18	Well, there are a whole slew of	10:39:10
19	communication mechanisms: There are new products,	10:39:14
20	product design influences it, how and where they are	10:39:18
21	distributed, the price that is being charged.	10:39:20
22	So, you know, there's a full array of	10:39:22
23	elements of the marketing mix via which the firms	10:39:26
24	influence consumers' perceptions of their product	10:39:32
25	and the value they place on the product.	10:39:34

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1	Q. In your field do you use theoretical models?	10:39:44
2	MR. O'FALLON: Objection, vague.	10:39:46
3	A. Yeah. Could you tell me what you mean by	10:39:48
4	"theoretical model"?	10:39:50
5	Q. When you were taking your graduate study, did you	10:39:52
6	use models to replicate different situations in the	10:40:00
7	business world?	10:40:02
8	A. To replicate? No, I would not say replicate.	10:40:06
9	Q. To use to study different situations?	10:40:08
10	A. Well, one sometimes uses a model as an abstract	10:40:16
11	representation of what you believe is going on in	10:40:20
12	the business place.	10:40:24
13	I mean, you know, in the field of	10:40:28
14	operations research we develop mathematical models	10:40:30
15	and we try to make those mathematical models, you	10:40:34
16	know, representations which capture some of the	10:40:38

17 reality of what's going on in the marketplace. 10:40:40
18 Q. Have you ever used models in your work? 10:40:42
19 A. Yes. 10:40:44
20 Q. Have you referred to models in your publications? 10:40:48
21 A. Yes. 10:40:48
22 Q. Can you name two models which you frequently use in 10:40:52
23 your work? 10:40:54
24 A. Which I frequently use in my work? 10:40:56
25 Q. That you use in your work. 10:40:58

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1 A. Okay. Well, I mean, if you look at my CV, I mean, 10:41:06
2 you know, one of the articles there is -- now that I 10:41:10
3 look at it, it's a typo is what it is. Number 9 on 10:41:12
4 page 4 should be a "Simulation Analysis of 10:41:18
5 Alternative Pricing Strategies" rather than a 10:41:20
6 "stimulation analysis." A stimulation analysis may 10:41:24
7 be more interesting, I don't know. But, yeah, 10:41:28
8 basically there we constructed some simulation 10:41:30
9 models, so... 10:41:38
10 Q. Professor, I am handing you what the court reporter 10:41:40
11 has marked as Defendants' Exhibit 3302 and ask if 10:41:44
12 you could take a look at that and identify it for 10:41:48
13 me. 10:41:54
14 A. Yes. It's an expert analysis of profitability by 10:41:58
15 Paul J. Much from Houlihan, Lokey, Howard & Zukin. 10:42:06
16 Q. Do you know -- 10:42:06
17 MR. O'FALLON: Just for the record, has 10:42:08
18 this one been amended? 10:42:10

19 MR. PURVIS: No, this is the original. I 10:42:14
20 understand that there has been an additional one, 10:42:16
21 and I don't think that's going to be a problem. 10:42:18
22 MR. O'FALLON: Just so the record is clear 10:42:20
23 then, there has been an addition to this? 10:42:22
24 MR. PURVIS: Right. 10:42:24
25

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1 BY MR. PURVIS:
2 Q. This is dated June of 1997, correct? 10:42:28
3 A. Yes, it is. 10:42:28
4 Q. And I understand from correspondence from 10:42:32
5 plaintiffs' counsel that there has been either an 10:42:40
6 amendment or a supplement to this; is that correct? 10:42:42
7 A. I believe there has been an amendment to it, yes. 10:42:44
8 Q. Have you received a copy of that from plaintiffs' 10:42:44
9 counsel? 10:42:44
10 A. Yes. 10:42:46
11 Q. And does it have a different date on it? 10:42:48
12 A. I don't know. 10:42:50
13 Q. Okay. Do you know Mr. Much? 10:42:52
14 A. No, I don't. 10:42:54
15 Q. Never talked to him on the phone? 10:42:56
16 A. No. 10:42:56
17 Q. Do you know anything about his qualifications? 10:43:00
18 A. No, I don't. 10:43:00
19 Q. Do you know his field of expertise? 10:43:02
20 A. No, I really don't. 10:43:04
21 Q. Have you read his deposition in this case? 10:43:08

22 A. No. 10:43:08
23 Q. Did you ask to receive this report? 10:43:12
24 A. This report specifically? 10:43:18
25 Q. Yes. 10:43:18

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1 A. No, I did not ask for Mr. Much's report. 10:43:24
2 Q. Could you generally describe Defendants' 10:43:32
3 Exhibit 3302 for the record? 10:43:34
4 A. Well, my recollection of it and the reason it was 10:43:42
5 sent to me, I guess, is I had asked for a 10:43:46
6 compilation of advertising and promotion and 10:43:52
7 marketing spending levels by the tobacco companies. 10:43:56
8 You know, this was sent to me, I guess, as the most 10:44:00
9 comprehensive source of that. 10:44:06
10 So that's my recollection of what's here. 10:44:08
11 But, I mean, I guess I can look through here and 10:44:16
12 tell you what's here. Is that what you want me to 10:44:18
13 do? 10:44:18
14 Q. No. I just wanted to know in what way you used this 10:44:20
15 report in arriving at the opinions you are giving in 10:44:24
16 this case. 10:44:24
17 A. Well, I just looked at this report and -- I mean, I 10:45:34
18 just used this generally to get an overall sense of 10:45:36
19 the sales levels and trends and that sort of thing. 10:45:38
20 And then the amended version of this 10:45:40
21 has -- or the addition has the expenditures on 10:45:48
22 advertising and promotion and marketing. 10:45:50
23 Q. And that's the extent to which you relied on 10:45:54

24 Mr. Much's report for your opinions? 10:45:56

25 A. I would say that's correct, yeah. 10:46:04

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1 Q. Did you do any independent research to verify the 10:46:06

2 data contained in Mr. Much's report? 10:46:10

3 A. I did not take -- no, I did not go back and kind of 10:46:18

4 look and see that, well, does his number that he has 10:46:22

5 for domestic tobacco revenues from Philip Morris 10:46:28

6 correspond to what Philip Morris is saying in their 10:46:30

7 annual report, no, I didn't check that out. 10:46:34

8 Q. Professor Dolan, I am handing you what we have 10:46:38

9 marked as Defendants' Exhibit 3303 and ask if you 10:46:42

10 can identify that. 10:46:42

11 MR. O'FALLON: Just so the record is 10:46:52

12 clear, what this exhibit is is a listing of all the 10:46:56

13 documents that have -- by Bates number -- that have 10:46:58

14 been provided to Professor Dolan by this law firm 10:47:02

15 and we actually put this list together. 10:47:08

16 BY MR. PURVIS:

17 Q. What's your understanding of this document, 10:47:10

18 Professor Dolan? 10:47:16

19 A. Well, as was just stated, my understanding is that 10:47:18

20 this is a listing that Robins Kaplan put together of 10:47:20

21 the documents which they have sent me in the case. 10:47:24

22 Q. When did you receive the documents represented by 10:47:28

23 this exhibit? 10:47:30

24 A. It varied. I mean, I got them sort of in waves, 10:47:38

25 beginning -- I think the first batch was probably in 10:47:42

1 January and, you know, continuing on up until right 10:47:50
2 before I was doing my expert report. 10:47:54

3 Q. Did you request documents from anyone? 10:47:58

4 A. I requested documents that related to a certain set 10:48:06
5 of issues. So I stated the kinds of documents I 10:48:14
6 would like to help me form my opinion and then they 10:48:20
7 were sent to me. 10:48:22

8 Q. Could you tell me what kinds of documents you 10:48:24
9 requested from the lawyers? 10:48:24

10 A. Yeah. You know, I started out by saying, you know, 10:48:26
11 I would first like to understand kind of the 10:48:32
12 marketing activities of the firms, so -- just in a 10:48:38
13 descriptive sense of what they were doing, so I 10:48:40
14 would like to see marketing planning documents from 10:48:42
15 all the companies and any underlying market research 10:48:48
16 reports, generally that sort of thing. 10:48:52

17 Q. Who did you make that request of? 10:48:56

18 A. Roberta Walburn would be my primary contact on the 10:49:02
19 case. 10:49:02

20 Q. Did you make any other requests for documents, other 10:49:06
21 than what you have just described? 10:49:08

22 A. Yeah, I think that was, you know, the general nature 10:49:14
23 of the requests that I made in January when I was 10:49:18
24 just getting started. 10:49:20

25 But then when I got some of the materials 10:49:22

1 and started going through them, I then came back and 10:49:26
2 said, well -- I was able to get more specific about, 10:49:28
3 gee, do we have anything that does this, you know, 10:49:32
4 is there a Philip Morris analog to what we have here 10:49:36
5 from RJR and so forth. So I got more specific over 10:49:40
6 time about, you know, what I wanted. 10:49:42
7 Q. Could you tell me the subjects that you got more 10:49:44
8 specific data on? 10:49:46
9 A. Well, let's see. I think, as I recall -- I mean, I 10:50:02
10 was looking for more Philip Morris documents of -- 10:50:08
11 like the marketing planning documents. Many times a 10:50:12
12 company will just have a regular process that they 10:50:14
13 go through annually, kind of reviewing a 10:50:16
14 particular -- reviewing the last year and setting 10:50:20
15 their plans for the upcoming year. And so I asked 10:50:24
16 for more information of that type. I asked for more 10:50:28
17 information about the particular representations 10:50:32
18 which the companies were making. I think that was 10:50:36
19 generally about it. 10:50:40
20 Q. There appear to be over 4,000 documents referenced 10:50:50
21 on this exhibit. Is that your best estimate? 10:50:54
22 A. I don't have an estimate as I sit here. I guess we 10:50:58
23 could -- 10:51:00
24 Q. I will represent to you I have done the math already 10:51:02
25 and it's about 4,200. Is that consistent with 10:51:08

1 your -- what you have received? 10:51:08
2 A. Well, I believe this list -- you know, I haven't -- 10:51:12

3 I believe this list to be consistent with what they 10:51:16
4 have sent me. 10:51:16
5 Q. You are aware that the tobacco companies have 10:51:18
6 produced millions of pages of documents to the 10:51:22
7 plaintiffs in this case, are you not? 10:51:24
8 A. I am aware that they have produced lots. Whether 10:51:28
9 it's, you know, millions or whatever, I honestly 10:51:34
10 don't know exactly what it is, but -- 10:51:36
11 Q. Have you -- excuse me. 10:51:38
12 A. I don't know exactly what the number in the millions 10:51:42
13 would be. 10:51:42
14 Q. Have you ever seen an index to the various documents 10:51:46
15 that the tobacco companies have produced? 10:51:48
16 A. No, I have not. I mean, the way we kind of worked 10:51:52
17 things was I, you know, basically said these are the 10:51:54
18 subject matters that I need information on. And 10:51:56
19 then I believe that they looked at some kind of 10:52:00
20 indexing system and then provided the documents to 10:52:04
21 me. 10:52:04
22 Q. They were mailed to you in Massachusetts? 10:52:06
23 A. Let's see. Certainly the large majority of them 10:52:12
24 were. There might have been a couple that were 10:52:16
25 handed to me when I was here for a meeting, but 10:52:20

1 certainly, you know, the large majority of them were 10:52:24
2 sent to me in Boston. 10:52:26
3 Q. How many times have you met with the lawyers in 10:52:30
4 connection with this case? 10:52:32

5 A. You mean personally, in person? 10:52:38

6 Q. Yes. 10:52:40

7 A. I think three. 10:52:42

8 Q. Were those meetings all here in Minneapolis? 10:52:46

9 A. Yes. 10:52:48

10 Q. Did you ever get any documents that you did not 10:52:54

11 request from the lawyers? 10:52:54

12 A. Well, as I said, I did not request documents so much 10:53:02

13 as request information of a particular type. 10:53:08

14 Q. Did you ever receive information of a particular 10:53:14

15 type that you had not requested from the lawyers? 10:53:16

16 A. Well, I don't know of a particular type. I mean, 10:53:30

17 certainly, you know, there have been times that I 10:53:34

18 picked up a two-page document and read it and kind 10:53:38

19 of said, gee, I wonder how that's relevant to me and 10:53:46

20 sort of put it aside. 10:53:46

21 But, I mean, at no time did anybody say to 10:53:52

22 me, well, look, you really should be looking at 10:53:54

23 documents of type X and we are sending you a box of 10:53:58

24 type X documents. 10:54:00

25 Q. I know that probably the majority of these documents 10:54:04

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1 are cigarette ads, are they not? 10:54:08

2 A. Again, I don't know whether that would represent the 10:54:12

3 majority, but I have big boxes full of cigarette 10:54:18

4 ads, right. 10:54:20

5 Q. And when you stated what you had requested from the 10:54:24

6 lawyers, you didn't mention that you requested 10:54:26

7 cigarette advertising. Did you request the ads be 10:54:28

8 sent to you or did the lawyers simply send them to 10:54:32
9 you? 10:54:32
10 A. No, I requested, you know, the basic -- I said I 10:54:34
11 want to understand the marketing activities of the 10:54:40
12 tobacco companies so, you know, send me what you 10:54:44
13 have got in terms of their internal planning 10:54:46
14 documents and anything that would help me understand 10:54:54
15 exactly what they did in the marketplace. 10:54:54
16 And certainly -- you know, I don't recall 10:54:56
17 saying specifically that I wanted -- you know, send 10:55:00
18 me all the ads you have got, but I would certainly 10:55:04
19 hope that when I say I want to understand what these 10:55:08
20 firms did that it would be understood that anything, 10:55:10
21 sort of, that was used in the marketplace that's -- 10:55:16
22 I would want to see those. 10:55:16
23 Q. Do I understand your testimony correctly that you 10:55:28
24 made a request for documents to the lawyers? 10:55:34
25 MR. O'FALLON: Objection, I think that 10:55:36

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1 misstates his testimony. 10:55:38
2 BY MR. PURVIS: 10:55:40
3 Q. I thought I understood you to say that you made a 10:55:42
4 request for certain types of -- categories of 10:55:44
5 documents from the lawyers. 10:55:44
6 A. No, I think about it a little bit differently. 10:55:48
7 Maybe it's just a semantic thing; maybe it's 10:55:50
8 important. 10:55:52
9 What I said is I want information on these 10:55:56

10 topics, you know, I want to understand what it is 10:56:00
 11 that the -- I want to understand the marketing 10:56:04
 12 activities of the tobacco companies, so send me what 10:56:08
 13 you have that's going to help me understand that. 10:56:10
 14 Some of the things that I think 10:56:12
 15 specifically would be helpful to me are annual 10:56:16
 16 planning documents, market research documents, 10:56:20
 17 evidence as to, you know, the levels of spending 10:56:24
 18 that they undertook, the kinds of things they spent 10:56:28
 19 their money on. 10:56:30
 20 So I made a request for information on a 10:56:34
 21 particular set of issues and then the lawyers sent 10:56:38
 22 to me documents which were responsive to my 10:56:44
 23 information requests. 10:56:46
 24 Q. Do you know if you received all of the documents 10:56:52
 25 that were responsive to your requests of the 10:56:54

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1 lawyers? 10:56:54
 2 A. You know, I -- 10:57:00
 3 MR. O'FALLON: I just would object to 10:57:02
 4 that. I mean, based on what universe? 10:57:10
 5 A. You know, I don't know what all the files contain, 10:57:20
 6 you know, so... I mean, I made my requests and, you 10:57:24
 7 know, I got information. 10:57:28
 8 Whether there is somewhere in the files 10:57:30
 9 another document which may be informative, I mean, I 10:57:38
 10 can't say because I don't know -- I mean, you are 10:57:40
 11 asking me about something that I don't know what it 10:57:42
 12 is. 10:57:42

13	I mean, I understand there's this lump of	10:57:44
14	stuff. And you are saying to me, well, is there	10:57:46
15	anything in that lump of stuff? I don't know. I	10:57:50
16	haven't looked at the lump of stuff.	10:57:52
17	Q. You mentioned that you requested planning and	10:57:54
18	research documents. Do you know how often, say,	10:57:58
19	Philip Morris puts out such documents?	10:58:00
20	A. "Such documents" meaning?	10:58:04
21	Q. Planning and research documents.	10:58:06
22	A. Planning and research documents? No, I don't know	10:58:10
23	the frequency with which Philip Morris would be	10:58:14
24	publishing those documents, no.	10:58:16
25	Q. Do you know whether you got all of the Philip Morris	10:58:20

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1	planning and research documents?	10:58:22
2	A. I mean, I suspect not. I don't know. I would guess	10:58:28
3	that I didn't because, you know, I asked for certain	10:58:32
4	ones, not all of them.	10:58:34
5	I didn't -- you know, I would imagine that	10:58:40
6	if I said send me all of the research and planning	10:58:46
7	documents that Philip Morris has, you know, we would	10:58:48
8	have had to rent a little train or, you know, a	10:58:50
9	truck if I asked for all of them.	10:58:52
10	I narrowed it down to saying, look, I want	10:58:54
11	information that will help me understand the	10:58:58
12	marketing activities, the market research, and so on	10:59:00
13	and so forth.	10:59:00
14	Q. Have you reviewed any internal company documents	10:59:06

15 other than the ones described in Exhibit 3303? 10:59:12
16 A. I don't -- 10:59:16
17 MR. O'FALLON: There's also a letter dated 10:59:18
18 August 6, 1997 that has an updating and it includes 10:59:22
19 a few additional ones. 10:59:24
20 MR. PURVIS: I understand that and I 10:59:26
21 didn't mean to exclude that. In fact, let's just go 10:59:28
22 ahead and mark that letter as an exhibit. Maybe we 10:59:32
23 already did. 10:59:34
24 BY MR. PURVIS:
25 Q. Handing you what's been marked as Defendants' 10:59:42

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1 Exhibit 3305, which I will represent to you is a 10:59:50
2 letter from Ms. Sutton to liaison counsel for the 10:59:52
3 defense. And items 7 through 11 appear to reference 11:00:00
4 additional Bates-numbered tobacco company 11:00:04
5 documents. 11:00:06
6 A. Um-hmm. 11:00:06
7 MR. O'FALLON: The only additional thing 11:00:14
8 that has been provided -- and I forgot to send a 11:00:16
9 letter this week -- we also gave him a rough version 11:00:18
10 of the Cheryl Perry deposition. It's a printout 11:00:22
11 from the disk because I don't think we have had any 11:00:24
12 transcript from that yet come through that I have 11:00:26
13 seen. We did have the disk. 11:00:34
14 BY MR. PURVIS:
15 Q. With Exhibit 3305 in front of you, does that plus 11:00:38
16 Exhibit 3303 represent the universe of tobacco 11:00:44
17 company documents that you have received from the 11:00:48

18 lawyers in this case? 11:00:50
19 A. It's my belief that it does, yeah. 11:00:54
20 Q. Have you looked at any other internal tobacco 11:00:56
21 company documents on the Internet? 11:00:58
22 A. No, I have not. 11:01:00
23 Q. Have you looked at any internal tobacco company 11:01:02
24 documents in any books about this litigation? 11:01:06
25 A. No, I have not. 11:01:08

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1 Q. Have you read any books about the tobacco 11:01:10
2 litigation? 11:01:10
3 A. Books about the tobacco litigation? No, I have not. 11:01:16
4 Q. Did you request to see a copy of the deposition of 11:01:22
5 Cheryl Perry? 11:01:24
6 A. I don't know that I specifically requested her 11:01:30
7 deposition. I believe I asked that I would like to 11:01:36
8 see, you know, the depositions of any of the experts 11:01:40
9 who went before me. 11:01:40
10 Q. Have you met personally any of the experts who are 11:01:44
11 named on behalf of the plaintiffs in this case? 11:01:48
12 A. Yes. 11:01:48
13 Q. Who have you met? 11:01:50
14 A. Professor Jaffe. 11:01:52
15 Q. And what were the circumstances of meeting with 11:01:54
16 Professor Jaffe? 11:01:56
17 A. It was when I came out here for my first meeting to 11:02:02
18 meet with the Robins Kaplan lawyers; he was here 11:02:06
19 that day. 11:02:06

20 Q. Prior to that did you know Professor Jaffe? 11:02:10
21 A. No, I did not. 11:02:10
22 Q. Have you had any other contact with Professor Jaffe, 11:02:16
23 other than that meeting in December of 1996? 11:02:18
24 A. It was January of '97. No, I have not. 11:02:20
25 Q. Just so I get my thoughts clear, you were contacted 11:02:24

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1 in late 1996 to work on this -- possibly work on 11:02:26
2 this litigation? 11:02:28
3 A. Right. 11:02:30
4 Q. But the first meeting was in January of 1997? 11:02:32
5 A. That's correct. 11:02:32
6 Q. And Professor Jaffe was at that first meeting? 11:02:36
7 A. He was having a meeting with some subset of lawyers 11:02:42
8 and I was having a meeting with others. And it 11:02:44
9 was: Hi, how are you, this is Professor Jaffe, this 11:02:50
10 is Professor Dolan. Then we went off. So I met 11:02:54
11 him, but that's -- 11:02:54
12 Q. You have not consulted with him about this 11:02:56
13 litigation? 11:02:56
14 A. No, I have not. 11:02:58
15 Q. Are there any of the other plaintiffs' expert 11:03:00
16 witnesses in this case that you have met? 11:03:02
17 A. No, he would be the only one. 11:03:02
18 Q. I note from Defendants' Exhibit 3305 that you have 11:03:06
19 received a copy of Professor Jaffe's deposition; is 11:03:10
20 that correct? 11:03:10
21 A. Yes. 11:03:12
22 Q. Dr. Perry in her deposition indicated that she had 11:03:14

23 requested a copy of that deposition simply so she 11:03:16
24 could see a deposition, an example of a deposition. 11:03:20
25 A. Right, right. 11:03:20

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1 Q. Did you make a similar request? 11:03:22
2 A. No, no. You know, I have had my deposition taken, 11:03:30
3 so it wasn't that so much. I mean, a little bit of 11:03:34
4 that, to see what a deposition might be like in this 11:03:38
5 particular litigation, but also I think it's just, 11:03:42
6 you know, a way to understand what the general areas 11:03:46
7 are that he's discussing. 11:03:48
8 Q. Did you rely on Professor Jaffe's deposition 11:03:52
9 testimony in formulating your opinions in this case? 11:03:56
10 A. No, I did not. 11:03:56
11 Q. Directing your attention back to Defendants' 11:04:06
12 Exhibit 3303 -- 11:04:12
13 MR. PURVIS: Can we have a time-out for 11:04:18
14 just a second, can we go off the record for a 11:04:22
15 second? 11:04:24
16 MR. O'FALLON: Sure. 11:04:24
17 (Discussion off the record.)
18 MR. PURVIS: Back on the record. 11:05:02
19 BY MR. PURVIS: 11:05:02
20 Q. Professor Dolan, thank you for helping in the 11:05:04
21 search. The last page of that exhibit which is 3303 11:05:08
22 I think we have determined may have been improperly 11:05:12
23 attached and, in fact, is probably a separate 11:05:16
24 exhibit in and of itself. 11:05:18

1 MS. SUTTON: That's correct. 11:05:22

2 MR. PURVIS: Maybe we could have the court 11:05:24

3 reporter mark it as 3303A, since it got lumped 11:05:30

4 there. And I represent to you it was just our 11:05:30

5 mistake in putting it there. 11:05:34

6 (Defendants' Exhibit 3303A

7 marked for identification.) 11:05:48

8 BY MR. PURVIS:

9 Q. Professor Dolan, I am handing you what the court 11:05:50

10 reporter has marked as Defendants' Exhibit 3303A. 11:05:58

11 Do you have that in front of you? 11:06:00

12 A. I do. 11:06:00

13 Q. Apparently we erroneously attached that as the last 11:06:02

14 page to Deposition Exhibit 3303. Could you tell me 11:06:06

15 what 3303A is? 11:06:10

16 A. Well, it says, "Robert Dolan Discovery Documents" 11:06:16

17 and then it says -- well, there's two titles, 11:06:22

18 "Transcript of Second Murrow Show" and "Transcript 11:06:26

19 of First Murrow Show." 11:06:28

20 Q. Did you receive those transcripts? 11:06:30

21 A. I don't specifically recall whether I got these 11:06:38

22 particular ones or not. 11:06:40

23 Q. Have you received transcripts of other television 11:06:44

24 programs? 11:06:44

25 A. Well, I may have gotten these; I said I don't know. 11:06:50

1 I do recall that -- I believe my expert report 11:06:56
2 references transcripts of television shows that I 11:06:58
3 received, yeah. 11:07:00

4 Q. I did not see your expert report referring to the 11:07:02
5 Edward R. Murrow programs. Do you know if you 11:07:06
6 relied on these transcripts in any way to arrive at 11:07:12
7 the opinions you are giving in this case? 11:07:14

8 A. I couldn't say as I sit here at the moment. 11:07:18

9 Q. Do you recall the subject matter of those television 11:07:20
10 programs? 11:07:22

11 A. I don't recall the specific subject matter of those 11:07:26
12 specific TV programs, no. 11:07:28

13 Q. Just to wrap this area up and clarify, the documents 11:07:42
14 on Defense Exhibit 3303 as supplemented by the 11:07:46
15 documents described -- by "documents" I mean tobacco 11:07:52
16 company documents -- as supplemented by 11:07:54
17 Exhibit 3305, does that constitute the entire 11:08:00
18 universe of documents that you have received from 11:08:02
19 the attorneys? 11:08:04

20 A. Subject to Mr. O'Fallon's addition of the rough 11:08:12
21 transcript of Ms. Perry's deposition, I believe 11:08:16
22 that's correct, yes. 11:08:18

23 Q. Does the universe of documents we have just 11:08:22
24 described represent -- strike that. 11:08:26

25 Are you in any way relying on the 11:08:30

1 deposition of Dr. Perry in giving your opinions in 11:08:36
2 this case? 11:08:36
3 A. Well, I may rely on the expertise of the other 11:08:46
4 experts in this case. But in terms of having 11:08:50
5 formulated my opinion that I submitted to you, my 11:08:56
6 expert statement, I was not relying on Dr. Perry's 11:09:00
7 deposition. 11:09:00
8 Q. Have you read her deposition? 11:09:02
9 A. I have -- "read" may be a little bit strong. I sort 11:09:06
10 of skimmed it. 11:09:08
11 Q. As you skimmed it, did you note anything that you 11:09:12
12 intended to rely on in giving your opinions in this 11:09:14
13 case? 11:09:16
14 A. No, not that, you know, I hadn't seen in original 11:09:24
15 documents myself. 11:09:26
16 MR. PURVIS: Would this be a good time to 11:09:32
17 take another break? 11:09:32
18 MR. O'FALLON: Sure, that would be fine. 11:09:36
19 (Break taken.) 11:09:38
20 MR. PURVIS: Why don't we go back on the 11:18:20
21 record. 11:18:20
22 BY MR. PURVIS:
23 Q. Professor Dolan, I understand you have a 11:18:22
24 clarification to a prior answer you wanted to make. 11:18:30
25 A. Right. You had asked me if I had met any of the 11:18:32

1 other expert witnesses and I had forgotten that I 11:18:34
2 have met Channing Robertson, who also will be an 11:18:36
3 expert in this case. 11:18:38

4 Q. Was this a social encounter or a meeting-meeting? 11:18:40

5 A. This was a social kind of an encounter rather than a 11:18:42

6 meeting-meeting.

7 Q. Did you discuss the litigation with him? 11:18:44

8 A. Not beyond, you know, he said to me, you know, what 11:18:50

9 do you do kind of thing. I said, well, I do 11:18:54

10 marketing. We had dinner. 11:18:56

11 Q. You are not basing any of your opinions in this case 11:18:58

12 on that meeting with him, are you? 11:19:00

13 A. No; I am not, no. 11:19:00

14 MR. PURVIS: At this time Mr. Falkenstein 11:19:04

15 is going to ask a few questions. I appreciate the 11:19:06

16 courtesy in allowing that break in procedure. 11:19:14

17 EXAMINATION

18 BY MR. FALKENSTEIN: 11:19:14

19 Q. Hi, Mr. Dolan. Do you prefer Professor Dolan, 11:19:18

20 Mr. Dolan? 11:19:18

21 A. Professor or mister is just great, or Bob. 11:19:22

22 Q. I'll call you doctor or professor or mister. 11:19:24

23 A. I am not a big fan of doctor, but... 11:19:28

24 Q. I am Eric Falkenstein with Debevoise & Plimpton on 11:19:30

25 behalf of CTR. 11:19:32

1 And let me ask you first what your 11:19:34

2 understanding is of what CTR is. 11:19:38

3 A. Well, it was sort of an affiliation of the tobacco 11:19:44

4 companies to sort of coordinate activities around -- 11:19:54

5 particularly around the issues of research and to 11:19:58

6 the health issues, is my belief. 11:19:58

7 Q. Do you know what the Tobacco Industry Research 11:20:02

8 Committee is? 11:20:02

9 A. Let's see. I think that comes a few years later. I 11:20:12

10 forget exactly the relationship between the two. 11:20:14

11 Q. Okay. Do you know the actual operations of the 11:20:16

12 Council for Tobacco Research, or CTR? 11:20:18

13 A. The "actual operations" meaning? 11:20:22

14 Q. How it is that CTR goes about funding research. 11:20:26

15 A. Generally, I believe, I have an understanding of 11:20:30

16 generally how it's done. 11:20:30

17 Q. Can you explain that to me? 11:20:32

18 A. My understanding is that, you know, it funds 11:20:36

19 research of people who are, as I understand it, not 11:20:44

20 employees of CTR. 11:20:46

21 Q. Does it do any research on its own, to your 11:20:50

22 understanding? 11:20:50

23 A. My -- I'm not sure on that point. 11:20:54

24 Q. Okay. Do you know about the process by which CTR 11:20:58

25 funds research? 11:20:58

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1 A. I do not know what the process is that CTR funds 11:21:04

2 research projects, no. 11:21:06

3 Q. In connection with your retention as an expert in 11:21:08

4 this case, have you been asked to give an opinion 11:21:10

5 about CTR research or any other aspect of CTR? 11:21:14

6 A. Well, I believe in my expert report, you know, 11:21:24

7 basically I do set out some aspects of that. But, I 11:21:30

8 mean, that would be sort of how I would be 11:21:34

9 representing CTR in my opinion, as you have seen in 11:21:42
10 my expert report. 11:21:44
11 Q. Okay. Are you able to summarize that for me? 11:21:44
12 MR. O'FALLON: Do you want to get out the 11:21:46
13 report? 11:21:48
14 BY MR. FALKENSTEIN:
15 Q. Do you have a copy? 11:21:48
16 A. Yes, I do. 11:21:50
17 Q. Let me ask you while you are getting that out, if 11:21:52
18 you can answer it, are you planning to give your 11:21:54
19 opinion at trial about CTR or any aspect of it? 11:22:02
20 A. Well, my plan for -- you know, my statement here 11:22:10
21 gives an outline of my anticipated testimony which, 11:22:14
22 you know, includes mention of CTR specifically, you 11:22:22
23 know, on page 9 there and then subsequently over on 11:22:42
24 page 10. 11:22:42
25 So, I mean, I think to the extent that -- 11:22:46

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1 in terms of explaining my opinion at trial, the 11:22:50
2 aspect of my opinion on, you know, this idea of 11:22:54
3 fostering the notion of the continuing controversy 11:22:58
4 on an open debate, you know, CTR would be mentioned 11:23:02
5 in that connection, I believe. 11:23:04
6 Q. How did CTR foster -- let me try to paraphrase, and 11:23:10
7 I am not trying to misstate your prior testimony. 11:23:14
8 But how is it your opinion that CTR tried to foster 11:23:16
9 a debate on the relationship between tobacco and 11:23:20
10 health consequences? 11:23:22

11 A. Well, it tried to foster the notion of the open 11:23:26
12 debate and so, you know, it's -- as I explained in 11:23:30
13 my expert report here, you know, it starts out with 11:23:34
14 the CTR public statement in 1954, this White Paper, 11:23:38
15 saying that, you know, there is no proof. 11:23:40
16 And then on page 10, the bottom of the 11:23:48
17 first paragraph, you know, describing -- in which 11:23:50
18 Philip Morris people are describing the information 11:23:54
19 sought by CTR and the industry, they are interested 11:23:56
20 in evidence which denies the allegations that 11:23:58
21 cigarette smoking causes disease. 11:24:00
22 So, you know, basically my plan at the 11:24:04
23 moment is to -- is that part of my opinion that I 11:24:10
24 would express at trial would include a description 11:24:12
25 of this industry attempt to foster the notion among 11:24:18

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1 people that the health effects are really open 11:24:22
2 issues and not -- and something that more research 11:24:26
3 is needed on, rather than something on which there 11:24:28
4 is definitive information. 11:24:30
5 Q. Do you rely purely on the so-called White Paper and 11:24:34
6 the second document that you referred to? 11:24:36
7 A. No, I wouldn't say that -- I couldn't sit here at 11:24:42
8 the moment and say that that would be the totality 11:24:46
9 of what I would be referring to. 11:24:46
10 I mean, this just happens to be -- the 11:24:48
11 report cites some specific examples, but I can't say 11:24:52
12 that at trial I wouldn't augment these examples that 11:24:56
13 I have used here. 11:24:58

14 Q. And do you know who issued the White Paper? 11:25:00
15 A. Well, I believe it was -- as it says on page 9, the 11:25:22
16 Tobacco Institute released the White Paper. And 11:25:26
17 that's CTR Public Statement 000015 there. 11:25:32
18 Q. Did the Tobacco Institute -- is the Tobacco 11:25:34
19 Institute the same organization as the Council for 11:25:40
20 Tobacco Research? 11:25:40
21 A. No, I don't believe they are identical. I couldn't 11:25:42
22 tell you exactly what the relationship is between 11:25:44
23 the two. 11:25:46
24 Q. Does the Tobacco Institute control CTR? 11:25:50
25 A. I will stick with my previous answer; I couldn't 11:25:52

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1 tell you what the relationship is between the two. 11:25:54
2 Q. So with respect to the White Paper, you don't know 11:25:58
3 whether anything that was stated in it can be 11:26:00
4 attributed directly to CTR? 11:26:04
5 A. Well, I mean, the Tobacco Institute released it and 11:26:14
6 I see it's got a designation of a CTR public 11:26:16
7 statement. But I haven't, you know, tried to sort 11:26:20
8 out, well, is it TI, is it TIRC, is it CTR; I 11:26:26
9 haven't tried to link back to any one of those 11:26:30
10 particular entities. 11:26:32
11 Q. Okay. Can you list for me any other sources on 11:26:36
12 which you rely, besides the White Paper and the 1954 11:26:40
13 Frank Statement, for your opinion that CTR tried to 11:26:46
14 foster the controversy that there is an open 11:26:50
15 question about smoking and health? 11:26:52

16 A. I can't as I sit here cite a specific document to 11:27:02
 17 you upon which I rely, but I rely on the general set 11:27:04
 18 of documents which I have received and reviewed in 11:27:08
 19 coming up with my opinion. 11:27:10
 20 As I said a moment ago, I offer some 11:27:12
 21 specific examples here, but I am not prepared at the 11:27:14
 22 moment to say that, you know, this is the sum total 11:27:18
 23 of what I am going to rely on or talk about at 11:27:22
 24 trial. 11:27:22
 25 Q. So you rely, then, upon the list of documents that 11:27:24

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1 you have received from counsel? 11:27:24
 2 A. I don't rely upon the list. I rely upon the 11:27:30
 3 information I was able to take from the documents 11:27:32
 4 that have been sent to me by counsel, yes. 11:27:36
 5 Q. And anything else, besides those documents? 11:27:36
 6 A. No. My focus would be on the documents which have 11:27:40
 7 been sent to me by counsel. 11:27:44
 8 Q. What is it about your expertise that enables you to 11:27:46
 9 provide an expert opinion about these documents? 11:27:50
 10 A. Well, I don't know that I am providing an expert 11:27:50
 11 opinion about documents. I am providing an expert 11:27:54
 12 opinion about the marketing practices of the people 11:27:58
 13 in the tobacco industry. 11:27:58
 14 Q. Does CTR market products? 11:28:02
 15 A. My belief is that CTR in and of itself does not 11:28:06
 16 market products. 11:28:08
 17 Q. Does CTR price products? 11:28:08
 18 A. My understanding is that the individual firms that 11:28:14

19 are part of this litigation market products, price 11:28:20
20 products, and that sort of thing. 11:28:22
21 But CTR, as far as I know -- again, I am 11:28:24
22 not totally clear on the linkages, the formal 11:28:28
23 linkages between these various organizations. But, 11:28:32
24 as I understand it, CTR in and of itself does not 11:28:38
25 market cigarettes. 11:28:38

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1 Q. And is it involved in product policy? 11:28:40
2 A. Well, it doesn't -- it does not itself. My 11:28:44
3 understanding is that it does not itself market 11:28:46
4 products. But to the extent that it does provide a 11:28:52
5 coordination mechanism for the industry, it could 11:28:56
6 influence the general marketing of products by the 11:28:58
7 individual participants. 11:29:00
8 Q. So you have no expert opinion about any issue 11:29:06
9 relating to CTR in pricing of products; is that 11:29:10
10 correct? 11:29:10
11 A. No, I don't as I sit here have any ideas about CTR 11:29:22
12 being a mechanism for price coordination. I don't 11:29:30
13 have -- 11:29:30
14 Q. Can you explain -- sorry. Are you finished? 11:29:32
15 A. I don't have -- that hasn't been a topic that I have 11:29:36
16 tried to address. 11:29:36
17 Q. Can you explain, if you have an opinion of this 11:29:40
18 sort, how CTR is involved in product policy? 11:29:44
19 A. I don't have an opinion about how CTR is involved in 11:29:54
20 product policy. It really isn't a topic that I have 11:29:56

21 addressed. 11:29:56
22 Q. How can you render an expert opinion about CTR if 11:30:00
23 what it engages in is outside the area of your 11:30:04
24 expertise? 11:30:04
25 MR. O'FALLON: Objection. It's not 11:30:06

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1 outside the area of his expertise. He has defined 11:30:08
2 his area of expertise much larger than that. 11:30:10
3 BY MR. FALKENSTEIN:
4 Q. How do you define CTR's activities to be within the 11:30:14
5 area of your expertise? 11:30:14
6 A. Well, again, I define my area of expertise as 11:30:18
7 relating to the marketing practices of the cigarette 11:30:24
8 industry. To the extent that CTR contributed to the 11:30:30
9 kind of information that was being disseminated, 11:30:34
10 that has an effect on the marketing environment. 11:30:38
11 So I am an expert on marketing. And to 11:30:42
12 the extent that they influence the marketing of 11:30:44
13 these products, you know, marketing and purchasing 11:30:50
14 of these products, then they fall within the purview 11:30:54
15 of what my expertise is. 11:30:56
16 Q. Let me try it again. How does CTR influence the 11:31:00
17 marketing of the products of the tobacco companies, 11:31:04
18 in your opinion? 11:31:06
19 MR. O'FALLON: Objection, asked and 11:31:06
20 answered. 11:31:08
21 A. Well, as I say, you know, CTR is a mechanism, as I 11:31:12
22 understand it, a mechanism via which certain 11:31:16
23 information is collected and disseminated. So that 11:31:22

24 influences consumers' purchasing decisions. 11:31:32
25 Q. How does it influence consumers' purchasing 11:31:34

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1 decisions? 11:31:34
2 A. Well, I mean, to the extent that this open debate is 11:31:38
3 being fostered, this notion that there is an open 11:31:44
4 debate about the health effects of smoking, to the 11:31:46
5 extent that that is something which CTR contributes 11:31:48
6 to, that open debate influences consumers' 11:31:52
7 purchases. 11:31:54
8 Q. How does CTR contribute to the open debate? 11:32:00
9 A. Well, the perception of there being an open debate, 11:32:04
10 as I understand it, you know, CTR -- as I say over 11:32:08
11 on page 10 of my expert report here, that the 11:32:12
12 information sought by CTR and what Philip Morris is 11:32:16
13 saying in 1970 is -- you know, what CTR is trying to 11:32:20
14 do is collect information which denies the 11:32:22
15 allegation that cigarette smoking causes disease. 11:32:24
16 Q. Okay. Do you know who wrote that document? 11:32:28
17 A. Which document? 11:32:28
18 Q. The document from which you just read. 11:32:30
19 A. Mr. Wakeham. 11:32:34
20 Q. Do you know who Mr. Wakeham was? 11:32:36
21 A. I believe he was the director of R&D for Philip 11:32:38
22 Morris. 11:32:38
23 Q. Do you know who he wrote it to? 11:32:40
24 A. I believe Mr. Cullman is the CEO of Philip Morris. 11:32:44
25 Q. Do you know whether Mr. Wakeham had any influence 11:32:48

1 over the Council for Tobacco Research? 11:32:50

2 A. I don't know what Mr. Wakeham's influence was or was 11:32:56

3 not. 11:32:56

4 Q. Do you have any information that leads you to 11:32:58

5 believe that Mr. Wakeham's statement in this 11:33:02

6 document was followed through on by CTR? 11:33:04

7 MR. O'FALLON: It's more of a statement of 11:33:08

8 what CTR is doing, not a statement of what CTR 11:33:12

9 should do. 11:33:14

10 A. Well, you know, it is -- I mean, it is his statement 11:33:40

11 that that's what CTR is doing at the time, not what 11:33:44

12 it should do in the future. 11:33:46

13 Q. Let me ask you: Do you know -- when he says "we" 11:33:52

14 are interested in evidence which we believe denies 11:33:54

15 the allegation that cigarette smoking causes 11:33:58

16 disease," do you know if he is including CTR in that 11:34:00

17 statement? 11:34:02

18 A. I can't tell from looking at what I have quoted here 11:34:10

19 as to what Mr. Wakeham actually means by the "we" 11:34:14

20 there, whether it includes CTR. 11:34:16

21 Q. But you have just assumed that the "we" does include 11:34:18

22 CTR, didn't you? 11:34:20

23 MR. O'FALLON: Objection. Let's be fair 11:34:22

24 about this. He said he can't tell based on the 11:34:24

25 exact statement. If you want to give him the 11:34:26

1 document and have him look at it, do it. 11:34:30

2 BY MR. FALKENSTEIN:

3 Q. Well, this is in your report and -- 11:34:32

4 MR. O'FALLON: This isn't a memory test. 11:34:34

5 Okay? 11:34:34

6 MR. FALKENSTEIN: I am not asking him for 11:34:38

7 his memory. I am asking him within the context of 11:34:40

8 his report whether he can -- he just stated on the 11:34:42

9 record that "we" includes CTR, and now he says he 11:34:46

10 doesn't think he can tell. 11:34:48

11 A. Whoa, whoa. I said what? 11:34:48

12 Q. You can't tell whether "we" includes CTR; is that 11:34:54

13 correct? 11:34:54

14 A. I said I cannot tell from looking at this one 11:35:00

15 sentence or two sentences, I guess, quoted in the 11:35:06

16 report whether Mr. Wakeham has in mind specifically 11:35:16

17 CTR or the industry. 11:35:16

18 I don't recall the document. Maybe the 11:35:20

19 document would provide some -- shed some light on 11:35:22

20 that if we looked at the whole document, but I can't 11:35:26

21 tell from this particular sentence. 11:35:26

22 Q. So if you don't know, if you happen not to know who 11:35:30

23 the "we" refers to, are you able to say that 11:35:32

24 Mr. Wakeham believed that CTR is interested in 11:35:36

25 evidence that denies the allegation that cigarette 11:35:38

1 smoking causes disease? 11:35:40

2 A. I cannot, on the basis of sitting here at the moment 11:35:46
3 with the information that I have, say that the "we" 11:35:48
4 there includes CTR specifically. 11:35:52
5 Q. Okay. Did Mr. Wakeham control CTR? 11:35:56
6 A. Well, he was an employee of Philip Morris rather 11:36:02
7 than the head of CTR. As I have said several times, 11:36:06
8 I have not really looked at the formal arrangements 11:36:12
9 between CTR and the industry participants. So I 11:36:16
10 couldn't say whether he controlled CTR or not. 11:36:18
11 Q. So you don't know? 11:36:20
12 A. That's what I just said. 11:36:22
13 Q. Okay. Are you an expert, Doctor -- are you an 11:36:28
14 expert, Professor, in interpreting documents about 11:36:30
15 tobacco research or about the etiology of disease? 11:36:32
16 A. Well, let's take that into two parts. 11:36:40
17 Let's do the etiology of disease. I do 11:36:44
18 not consider myself an expert in the etiology of 11:36:48
19 disease. There are other experts in this case whose 11:36:50
20 opinion I will rely on for that. 11:36:54
21 Am I an expert in interpreting tobacco 11:36:56
22 research? Some kinds of tobacco research I am an 11:37:00
23 expert in interpreting. 11:37:04
24 Q. And are you an expert in interpreting certain of 11:37:06
25 CTR's funded research? 11:37:08

1 A. I'm an expert -- let me specify the type in which I 11:37:14
2 am an expert. As I say, I don't understand -- I 11:37:20
3 understand CTR had an active research program, and 11:37:22
4 my belief is that it was mostly around health 11:37:24

5 aspects rather than consumer purchasing. 11:37:26

6 So, I mean, the interpretation of -- the 11:37:30

7 types of tobacco research documents about which I 11:37:34

8 have an expertise in interpreting would deal with 11:37:36

9 things like consumer purchase decisions and 11:37:40

10 marketing aspects, rather than the health aspect, 11:37:46

11 rather than the linkage of smoking to disease. 11:37:48

12 So I am not an epidemiology expert on the 11:37:54

13 etiology of diseases. There is another expert in 11:37:58

14 the case who will address those issues. 11:38:00

15 Q. Are there CTR documents or research reports upon 11:38:02

16 which you claim to be an expert about interpreting? 11:38:04

17 A. I mean, there are CTR documents that I have, you 11:38:18

18 know, cited in my report here that I believe that I 11:38:22

19 can reasonably put within my area of expertise and 11:38:26

20 say this is information which was provided to the 11:38:30

21 public and here, you know, would be the impact of 11:38:32

22 that on purchase decisions. 11:38:38

23 Q. Okay. Let's go through your report, then, but let 11:38:38

24 me just finish up -- I have maybe just one or two 11:38:40

25 follow-up questions on the Wakeham documents, so 11:38:42

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1 then we can skip that portion of it when we get to 11:38:44

2 it.

3 I don't think, by the way, that I want to 11:38:46

4 ask questions on more than maybe a third of the 11:38:46

5 entire report, so I don't think it's going to be too 11:38:50

6 cumbersome. 11:38:50

7 But about the Wakeham document, you have 11:38:52
8 no information that would enable you to render an 11:39:00
9 opinion that CTR followed any advice of Mr. Wakeham; 11:39:04
10 is that true? 11:39:04
11 MR. O'FALLON: Objection, misstates the 11:39:06
12 previous testimony. 11:39:08
13 BY MR. FALKENSTEIN:
14 Q. Let me ask you, then, in your own words what your 11:39:10
15 answer to that question would be. 11:39:12
16 A. Could I have the question read back, please?
17 Q. I will restate the question. Do you have any 11:39:16
18 knowledge or any information that would lead you to 11:39:20
19 believe that this statement that you quote from 11:39:22
20 Dr. Wakeham was followed through on by the 11:39:24
21 activities of the Council for Tobacco Research? 11:39:28
22 A. I have not examined the -- you know, as we have 11:39:40
23 already covered, I have not examined the sort of 11:39:42
24 funding processes of CTR. What I have done is to 11:39:48
25 look at the general representations of the industry 11:39:54

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1 on this open debate question. 11:39:56
2 I haven't specifically tried to look at 11:39:58
3 the issue to say, okay, did CTR go and, you know, 11:40:04
4 particularly fund research in a biased way that, you 11:40:10
5 know, was directed to the question of those 11:40:12
6 allegations. 11:40:12
7 Q. So the answer to my question, which I have to ask 11:40:16
8 again because I didn't get an answer, I think it's 11:40:18
9 yes or no. 11:40:18

10 Do you have any information that leads you 11:40:20
 11 to believe that CTR followed this particular 11:40:22
 12 statement made by Mr. Wakeham? 11:40:24
 13 MR. O'FALLON: Objection, asked and 11:40:26
 14 answered. 11:40:26
 15 A. Yeah, I will stick with my previous answer on it. 11:40:28
 16 Q. I don't think the question was answered. You gave 11:40:32
 17 me a statement about why it is you feel that you 11:40:34
 18 have certain opinions. I am asking you whether you 11:40:36
 19 know whether CTR followed this particular piece of 11:40:40
 20 advice. 11:40:40
 21 MR. O'FALLON: Objection, asked and 11:40:42
 22 answered. 11:40:42
 23 A. Yeah, I have not examined the funding policies of 11:40:48
 24 CTR, so I could not go through a list of particular 11:40:54
 25 projects that CTR has funded and infer from that 11:41:00

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1 that CTR was following the advice which is being 11:41:04
 2 stated here. So what -- 11:41:04
 3 Q. So you can't -- 11:41:06
 4 A. Let me finish. So what I -- part of my opinion is 11:41:10
 5 that overall the industry, through statements by the 11:41:18
 6 Tobacco Institute and individuals who were in the 11:41:24
 7 industry, fostered this notion of an open debate. 11:41:26
 8 To your specific question about, you know, 11:41:28
 9 did CTR then implement this particular strategy of, 11:41:34
 10 you know, only funding research with this particular 11:41:36
 11 point of view, I don't have specific information on 11:41:46

12	that.	11:41:46
13	Q. And do you know whether CTR was interested in	11:41:48
14	evidence that casts doubt on the link between	11:41:48
15	smoking and health?	11:41:50
16	MR. O'FALLON: Objection, lack of	11:41:52
17	foundation.	11:41:52
18	A. I don't really -- as I say, I haven't looked at kind	11:41:58
19	of the formal chart or the operations of CTR to be	11:42:00
20	able to answer that.	11:42:02
21	Q. Do you know if CTR was steered in a direction by the	11:42:06
22	companies that would lead it to -- would render the	11:42:12
23	research that it funded tainted?	11:42:18
24	MR. O'FALLON: I am going to object to	11:42:18
25	that. I am also going to point out that there's an	11:42:20

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1	awful lot of information that we still don't have,	11:42:22
2	that we are fighting about concerning privilege,	11:42:24
3	that's going to go to issues exactly like this.	11:42:28
4	A. Well, again, you know, I have not looked at the	11:42:30
5	formal sort of operational mechanisms by which CTR	11:42:36
6	related to the industry, so I couldn't answer your	11:42:40
7	question.	11:42:40
8	Q. Have you read CTR's annual reports?	11:42:42
9	A. If I did, it is not something that is vivid in my	11:42:54
10	memory at the moment.	11:42:56
11	Q. Do you know if it's listed in the list of documents	11:42:58
12	that was given to you by plaintiffs' counsel?	11:43:00
13	A. I don't know. I couldn't say whether those annual	11:43:02
14	reports were sent to me or not.	11:43:04

15 Q. Do you know what they are? 11:43:04
16 A. Do I know what they are? 11:43:06
17 Q. (Nodding.) 11:43:06
18 A. No. 11:43:08
19 Q. You have no idea? 11:43:08
20 MR. O'FALLON: He just said he couldn't 11:43:12
21 remember. 11:43:12
22 A. I don't recall seeing one, so I, you know, would be 11:43:14
23 speculating based on the title what it might 11:43:18
24 include. So, no, I don't recall looking at them. 11:43:22
25 Q. Have any lawyers spoken with you about your opinions 11:43:28

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1 specifically about CTR? 11:43:30
2 MR. O'FALLON: Objection, that calls for 11:43:32
3 work product, protected information. 11:43:36
4 MR. FALKENSTEIN: Are you instructing the 11:43:38
5 witness not to answer? 11:43:38
6 MR. O'FALLON: I am. 11:43:44
7 MR. FALKENSTEIN: Let me respond to that 11:43:46
8 quickly. I think a yes or no answer doesn't get 11:43:48
9 into the substance of any work product. 11:43:50
10 MR. O'FALLON: I think it does. 11:43:52
11 MR. FALKENSTEIN: So you're not going to 11:43:52
12 let him answer yes or no?
13 MR. O'FALLON: If you want to ask him has 11:43:52
14 he ever discussed the subject matter of CTR with 11:43:56
15 lawyers, I will let him answer that question yes or 11:43:58
16 no. Other than that, you are asking for a specific 11:44:02

17 opinion and a specific type of discussion. 11:44:04
18 MR. FALKENSTEIN: I will ask the yes or no 11:44:06
19 question, then. 11:44:06
20 BY MR. FALKENSTEIN:
21 Q. Have you discussed the substance of your testimony 11:44:08
22 about CTR specifically with lawyers? 11:44:12
23 A. Have I discussed the substance of my testimony about 11:44:14
24 CTR specifically with lawyers? 11:44:18
25 Q. Yes, any testimony you may give. 11:44:20

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1 MR. O'FALLON: I will allow him to answer 11:44:22
2 whether he has discussed CTR generally with 11:44:24
3 lawyers. 11:44:24
4 And just so you understand, if you are 11:44:28
5 going to -- if he's going to answer this one, I am 11:44:30
6 going to expect your experts to answer the exact 11:44:36
7 same questions. Okay? Do we have that 11:44:38
8 understanding? 11:44:38
9 MR. SIPKINS: You don't have that 11:44:40
10 understanding. 11:44:40
11 MR. O'FALLON: Well, then I am in somewhat 11:44:42
12 of a quandary here. 11:44:42
13 MR. FALKENSTEIN: I just need to know what 11:44:44
14 you will let him answer and then I will ask -- 11:44:46
15 MR. O'FALLON: You can ask him if he has 11:44:48
16 generically discussed CTR with lawyers. 11:44:50
17 BY MR. FALKENSTEIN:
18 Q. Let me ask you that question. Should I state it for 11:44:52
19 the record or do you understand the question? 11:44:54

20 A. I think I understand it. The answer to that 11:44:56
21 question, of have I generically discussed CTR with 11:44:58
22 the lawyers, would be yes. 11:45:00
23 Q. Okay. Let's turn to your report now. 11:45:02
24 A. Okay. 11:45:02
25 Q. Okay. On page 2 -- I am referring to, by the way, 11:45:12

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1 for the record, Defendants' Exhibit 3306. 11:45:16
2 Page 1, although it doesn't have a page 11:45:20
3 number, but it's the page before page 2 which does 11:45:24
4 have a page number. 11:45:24
5 A. Right. 11:45:26
6 Q. You state the following under sub (ii). Can I have 11:45:30
7 you read that portion into the record, if you -- 11:45:36
8 A. Sure. "I expect to testify at trial with respect 11:45:38
9 to: (i) general principles of marketing management, 11:45:42
10 (ii) the tobacco industry's practices in 11:45:42
11 stimulating, managing, and satisfying consumers' and 11:45:46
12 potential consumers' demand for cigarettes." 11:45:48
13 Q. Great. Does this subcategory (ii), "the tobacco 11:45:52
14 industry's practices," et cetera, does that word 11:45:56
15 "industry" include CTR? 11:45:58
16 A. Yes. 11:45:58
17 Q. In what way does CTR -- is CTR implicated in your 11:46:06
18 statement here? 11:46:06
19 A. Well, I view CTR to be, you know, the way I would 11:46:10
20 define -- I guess other people could use the term 11:46:12
21 "tobacco industry" to mean specifically the people 11:46:14

22 who -- you know, Philip Morris, Lorillard, 11:46:20
23 et cetera, the people who actually market 11:46:22
24 cigarettes. 11:46:22
25 But I am saying it's more generally, that 11:46:24

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1 there are industry associations that have an impact 11:46:30
2 on stimulating, managing, and satisfying consumer 11:46:36
3 and potential consumer demand. 11:46:38
4 So I am not limiting my testimony just to 11:46:40
5 the tobacco companies per se, I am including the 11:46:44
6 associations within the industry as well. 11:46:48
7 Q. And what impact does CTR have? 11:46:50
8 A. Well, to the extent that CTR influences the 11:46:56
9 information that people have about these products, 11:47:00
10 they would have an impact on stimulating demand for 11:47:06
11 cigarettes. 11:47:08
12 Q. Can you explain that further; are you able to 11:47:12
13 explain that further? 11:47:14
14 MR. O'FALLON: Objection, asked and 11:47:14
15 answered. 11:47:16
16 A. Well, I thought -- 11:47:18
17 Q. Can you get more specific? 11:47:18
18 A. Yeah. I mean, to the extent that CTR through its 11:47:28
19 activities contributes to the perception in the 11:47:32
20 minds of consumers that there is an open debate 11:47:34
21 about the health effects of cigarettes rather than 11:47:40
22 some hard evidence that it is linked to diseases, to 11:47:48
23 the extent that CTR does contribute to that 11:47:52
24 perception, that influences consumer demand for the 11:47:56

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1 Q. You keep using the words "to the extent"; I think 11:47:58
2 that is a direct quotation. 11:48:00
3 A. Right. 11:48:00
4 Q. To what extent are you talking about? 11:48:02
5 A. I have not tried to factor back to CTR specifically 11:48:08
6 its contribution to the open debate. I have looked 11:48:14
7 at the industry as a whole and said collectively the 11:48:18
8 industry -- what was the impact of the overall 11:48:24
9 industry. 11:48:24
10 I haven't -- it hasn't really been a 11:48:26
11 subject matter that I have addressed as saying, 11:48:28
12 okay, how much of this is due to CTR specifically; I 11:48:32
13 haven't examined that question. 11:48:36
14 Q. But you are willing to assume that it's part of it; 11:48:38
15 is that correct? 11:48:40
16 MR. O'FALLON: Objection, asked and 11:48:42
17 answered. 11:48:42
18 A. No, I am not making any assumption. I mean, I am 11:48:48
19 stating, you know, I will -- I have stated in my 11:48:50
20 expert report some examples of the kind of 11:48:54
21 information. You know, I may augment that with 11:48:56
22 other examples at trial. But I am not making an 11:49:00
23 assumption about CTR or anything, I am not making an 11:49:08
24 assumption. 11:49:10
25 Q. Well, you did state that you believed that CTR -- 11:49:12

1 it's your opinion that CTR contributes to the open 11:49:16
2 debate about the relationship between tobacco and 11:49:18
3 health; is that correct? 11:49:20
4 A. Well, yeah. I mean, to the extent that CTR is, you 11:49:26
5 know, making public statements that there is no 11:49:30
6 proof, you know, then they are contributing to this 11:49:36
7 perception of the open debate in the minds of the 11:49:40
8 consumers. 11:49:42
9 But, again, I have not kind of gone back 11:49:44
10 and said, okay, how much of this was CTR, how much 11:49:50
11 the individual manufacturers, how much the Tobacco 11:49:54
12 Institute, and so on and so forth. 11:49:54
13 I have looked at the collection of 11:49:58
14 activities of the industry as a whole and that's -- 11:50:02
15 you know, that's what I am referring to, that's what 11:50:08
16 I am testifying about, you know, this idea of 11:50:10
17 perpetuating the notion of an open debate. 11:50:14
18 But, again, as I have said several times, 11:50:16
19 I haven't looked at it from the point of view of 11:50:18
20 saying, okay, well, let's allocate this much to CTR; 11:50:22
21 I haven't done that. 11:50:22
22 Q. You haven't reviewed CTR's research program, though, 11:50:26
23 have you? 11:50:26
24 A. I have not looked at, you know, substantively 11:50:36
25 reviewed CTR's research program, no. 11:50:38

1 Q. And you don't know who has received CTR funds? 11:50:42

2 A. I could not, other than what I said earlier -- you 11:50:46

3 know, my understanding is that they fund, you know, 11:50:52

4 allegedly independent researchers rather than, you 11:50:58

5 know, have a bunch of employees of their own. 11:51:02

6 I do recall seeing some listing of 11:51:06

7 projects and that sort of thing, but I don't have -- 11:51:12

8 I can't specifically cite any of them to you as I 11:51:14

9 sit here at the moment. 11:51:14

10 Q. Do you know whether CTR-funded researchers have made 11:51:16

11 statements about the question of tobacco use and its 11:51:18

12 implications on health? 11:51:20

13 A. I believe they have. 11:51:22

14 Q. Can you cite any? 11:51:24

15 A. No; I couldn't cite a specific one as I sit here, 11:51:26

16 no. 11:51:26

17 Q. Are there any cited in your report? 11:51:28

18 A. I do not believe so. 11:51:30

19 Q. Do you plan to cite any at trial? 11:51:34

20 A. I don't know. As I sit here at the moment, I don't 11:51:38

21 have any plans one way or the other on that. 11:51:42

22 Q. Are there any listed in the list of documents that 11:51:42

23 we have referred to earlier? 11:51:44

24 A. Any CTR researcher findings? 11:51:48

25 Q. Yes. 11:51:50

1 A. I believe there are. I am not certain, but I 11:51:54

2 believe there are. 11:51:54

3	Q.	Any CTR-funded research public statements in that	11:51:58
4		list?	11:52:00
5	A.	Any CTR research public statements?	11:52:02
6	Q.	CTR-funded researcher public statements or public	11:52:06
7		statements made by a CTR-funded researcher.	11:52:14
8	A.	A public statement, as opposed to research	11:52:16
9		findings?	11:52:18
10	Q.	Yeah, a public statement.	11:52:20
11	A.	I am not honestly sure whether there are any in	11:52:24
12		there or not.	11:52:26
13	Q.	How about any CTR public statement?	11:52:28
14	A.	There are CTR public statements in there, yeah.	11:52:30
15	Q.	And any in addition to the ones that you have	11:52:32
16		referred to so far in the last few minutes of the	11:52:34
17		deposition?	11:52:34
18	A.	I can't be sure as I sit here at this moment.	11:52:40
19	Q.	None come to mind?	11:52:40
20	A.	None come to mind at this moment, no.	11:52:44
21	Q.	If we could go to page 2, the first full paragraph,	11:52:54
22		if you could read the sentence starting with "I	11:52:58
23		expect to address..."	11:53:00
24	A.	I'm sorry. Where are you?	11:53:02
25	Q.	Page 2, first full paragraph, last sentence,	11:53:06

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1		starting with "I expect to address..."	11:53:10
2	A.	I'm losing you.	11:53:12
3		MR. O'FALLON: I think it's right there	11:53:18
4		(indicating).	11:53:18
5	A.	Oh, okay, I got it. Right after the closed quotes?	11:53:20

6 Q. Yes, yes. 11:53:22
7 A. Okay. "I expect to address the representations 11:53:26
8 which the cigarette manufacturers and their trade 11:53:28
9 associations made as to the nature of their product 11:53:30
10 and their business activities, including..." Do you 11:53:34
11 want to keep going? 11:53:36
12 Q. Yeah, sure, you can -- sub (i), if you could read 11:53:38
13 that one. 11:53:40
14 A. Sub (i): "The health effects of cigarette 11:53:42
15 smoking." And sub (ii): "The addictive nature of 11:53:44
16 cigarettes." 11:53:44
17 Q. As you sit here today, do you know -- can you 11:53:50
18 describe your opinion about CTR's relation to your 11:53:54
19 statement here? 11:53:56
20 A. Well, again, I mean, if you look over -- if we look 11:54:06
21 over to my expert report over in section B starting 11:54:14
22 on page 9, where we have been a little bit already 11:54:16
23 -- 11:54:16
24 MR. O'FALLON: Can I just make -- TIRC, 11:54:18
25 which was the predecessor of CTR, is also included 11:54:20

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1 in here. Are you including both of those in here? 11:54:24
2 MR. FALKENSTEIN: If we refer to CTR, we 11:54:24
3 will for the purpose of this deposition include it 11:54:26
4 to mean since 1954, which technically had a 11:54:30
5 different name, TIRC. So you can -- if we say CTR, 11:54:34
6 it will include the organization -- 11:54:36
7 MR. O'FALLON: There's also statements on 11:54:38

8 page 5 from TIRC, so... 11:54:40

9 MR. FALKENSTEIN: Okay. 11:54:44

10 A. Okay. So, I mean, what I have in my expert report 11:54:48

11 there in section B is basically, you know, that's 11:54:54

12 the general nature of my anticipated testimony with 11:54:58

13 respect to the cigarette manufacturers' and trade 11:55:04

14 associations' representations about the health 11:55:06

15 effects of cigarette smoking. 11:55:08

16 Again, those are specific examples rather 11:55:10

17 than an exhaustive list, but that's the general 11:55:14

18 nature of my planned testimony. 11:55:20

19 Q. Do you also have an opinion as to whether CTR is 11:55:24

20 involved in the question about -- in sub (ii), which 11:55:28

21 is "the addictive nature of cigarettes," on page 2? 11:55:32

22 A. Yeah, as I sit here at the moment I don't know that 11:55:52

23 I really have tried to parcel out -- I know that I 11:55:54

24 haven't tried to parcel out a role for CTR in any 11:55:58

25 particular aspect of this, so... 11:56:02

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1 Q. Are you going to? 11:56:02

2 A. I didn't plan to. I mean, basically the way I look 11:56:10

3 at this is to say, look, I am looking at what the 11:56:12

4 communications of the industry as a whole were in 11:56:20

5 this regard. 11:56:22

6 You know, basically what I am interested 11:56:22

7 in is looking at it from the consumer side and 11:56:26

8 saying, okay, what is the information which the 11:56:28

9 public is getting. 11:56:28

10 Now, I have not in preparation of my 11:56:32

11 opinion really focused on sort of saying, well, 11:56:36
12 okay, it was this much from the manufacturers and 11:56:38
13 this much from CTR. 11:56:40
14 And it may be for some reason that 11:56:44
15 somebody else thinks it's important to do that, but 11:56:46
16 I really was looking at it from an aggregate 11:56:50
17 industry perspective and saying, look, here are the 11:56:52
18 communications which are coming out of the 11:56:54
19 industry. 11:56:54
20 So I haven't -- I didn't view it as 11:56:58
21 necessary for what I wanted to do, to really look 11:57:02
22 into the linkages between CTR and the manufacturers, 11:57:04
23 because I am looking at it from an aggregate 11:57:06
24 industry point of view. 11:57:08
25 Q. But to summarize -- and tell me if I am misstating. 11:57:12

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1 To summarize, you don't have an opinion that links 11:57:14
2 CTR to the question about addictiveness of nicotine; 11:57:22
3 is that correct? 11:57:22
4 MR. O'FALLON: Objection, asked and 11:57:24
5 answered. That's not what he said. 11:57:24
6 MR. FALKENSTEIN: Let me ask him if that's 11:57:26
7 what he said. 11:57:28
8 BY MR. FALKENSTEIN:
9 Q. Is that a summary? 11:57:28
10 A. Well, what I -- 11:57:30
11 Q. I don't need another summary, but you can tell me if 11:57:30
12 I am right or wrong. 11:57:32

13 A. Right or wrong with respect to? 11:57:32
14 Q. I just want to know whether you link CTR into the 11:57:34
15 question of whether nicotine is addictive. 11:57:36
16 MR. O'FALLON: You know, he has answered 11:57:38
17 your question. If you don't like the way he has 11:57:40
18 answered your question, you can't continue to ask 11:57:42
19 him to answer it in the way you want it answered. 11:57:44
20 MR. FALKENSTEIN: That's a difference of 11:57:46
21 opinion you and I have, but... 11:57:48
22 A. Well, I am repeating my myself I know, but it's the 11:57:52
23 only way I know how to say what's going on, is that 11:57:56
24 my focus has been what is the aggregate set of 11:58:02
25 information which the industry is presenting and I 11:58:06

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1 have not tried to parcel it back to any one 11:58:08
2 particular source. 11:58:10
3 So as I sit here at the moment, have I 11:58:12
4 said, okay, CTR really had a role in perpetuating 11:58:18
5 the belief among people that cigarette smoking was 11:58:24
6 not addictive? I have not examined the role of CTR 11:58:28
7 specifically doing that. 11:58:30
8 Q. Okay. What about in sub (iii), have you examined 11:58:36
9 the role or do you have an opinion about the role of 11:58:38
10 CTR in marketing activities as you discuss it in 11:58:42
11 paragraph (iii)? 11:58:42
12 A. You know, it would be really the same answer that I 11:58:50
13 have given to sub (ii); again, I have not tried to 11:58:54
14 parcel it back to CTR or the individual 11:59:02
15 manufacturers. 11:59:04

16 Q. And what about (iv), which relates to marketing of 11:59:06
17 cigarettes to youth, was CTR involved in the 11:59:08
18 marketing of cigarettes to youth? 11:59:44
19 A. Well, I don't see anything in my expert report as I 11:59:48
20 look quickly through it here that mentions CTR in 11:59:52
21 particular with respect to the issue of marketing to 11:59:56
22 youth. 11:59:56
23 But, you know, again, like my answer to 12:00:00
24 the previous question, it has not been really a 12:00:04
25 subject matter for me, to try to specifically look 12:00:06

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1 at the role of CTR -- 12:00:12
2 Q. Okay. 12:00:14
3 A. -- in the overall industry point of view. 12:00:16
4 Q. So you don't see it in your report. As you sit here 12:00:20
5 today, do you recollect anything that relates to the 12:00:22
6 question I just asked? 12:00:24
7 MR. O'FALLON: Objection, asked and 12:00:26
8 answered. 12:00:26
9 A. Yeah, I don't recollect anything specifically about 12:00:30
10 CTR's role in this. Again, it really hasn't been a 12:00:36
11 topic that was salient to me. 12:00:40
12 Q. If we can go to the next paragraph below, again back 12:00:42
13 on page 2, it begins -- it's the last full paragraph 12:00:46
14 and it begins, "Having addressed the 12:00:52
15 representations..." Can you explain to me what you 12:00:54
16 mean by this paragraph? 12:00:56
17 MR. O'FALLON: Objection, overbroad and 12:00:58

18	vague.	12:01:00
19	A. I'm sorry. Can --	12:01:06
20	Q. Sure. Do you want to break it down, would that be	12:01:10
21	easiest for you? Would it be easier to say --	12:01:10
22	A. I just don't know what you are confused about, I	12:01:14
23	guess.	12:01:14
24	Q. I guess my confusion is not relevant, but the real	12:01:18
25	issue is: Can you explain to me what you -- can you	12:01:22

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1	explain on the record what it is that you intend to	12:01:24
2	express here?	12:01:24
3	MR. O'FALLON: The record itself states	12:01:28
4	what he intends to express.	12:01:34
5	A. Okay.	12:01:36
6	Q. Maybe it would be easier to break it down. You say,	12:01:38
7	"...I expect to describe the actual practices of	12:01:40
8	participants," and then you say, "assessing first	12:01:42
9	their conformance to that required by the law and	12:01:46
10	their own representations of the nature, scope, and	12:01:48
11	purposes of their activities..."	12:01:50
12	A. Um-hmm.	12:01:52
13	Q. Do you expect to describe the practices of CTR and	12:02:00
14	assess CTR's conformance to that required by law and	12:02:08
15	CTR's own representations of the nature, scope, and	12:02:10
16	purpose of its activities?	12:02:12
17	A. Well, as far as CTR is concerned -- again, I am	12:02:20
18	talking about the participants in the industry, and	12:02:28
19	to the extent that CTR becomes relevant -- is	12:02:32
20	relevant in that, I would describe some of the	12:02:34

21 activities of what CTR does. 12:02:38
22 Q. And what about the second thing there, where you say 12:02:40
23 "their impact on consumers' adoption and 12:02:42
24 continuation of smoking"? 12:02:44
25 A. Right. 12:02:44

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1 Q. What is CTR's impact on consumers' adoption and 12:02:48
2 continuation of smoking? 12:02:50
3 A. Well, again, as we have already discussed, I said to 12:02:56
4 the extent that CTR contributes to the information 12:03:00
5 that is available to consumers, that would have an 12:03:04
6 impact on consumers' decisions to adopt and continue 12:03:08
7 smoking. 12:03:08
8 Q. Okay. At the very bottom of the page you say, and I 12:03:14
9 will quote now, "I expect to testify that industry 12:03:16
10 participants consistently and knowingly 12:03:20
11 misrepresented both the impact of their product on 12:03:22
12 users and the purpose of their marketing 12:03:24
13 activities." 12:03:26
14 Do you include CTR in your statement that 12:03:28
15 industry participants did this? 12:03:30
16 A. Well, again, I mean, to the extent that CTR -- you 12:04:02
17 know, the whole issue of the promise to investigate 12:04:06
18 the health effects of cigarette smoking, report on 12:04:10
19 that to the public, I mean, to the extent that it 12:04:14
20 was -- you know, CTR that did not deliver on that 12:04:24
21 promise, I mean, CTR would be part of the industry 12:04:26
22 participants I would look at. 12:04:26

23 But, again, I have not at this point in 12:04:32
24 time really tried to parcel out CTR as a specific 12:04:34
25 entity, I have been looking more at the industry 12:04:36

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1 level as a whole. So I don't mean to exclude CTR at 12:04:40
2 this point in time. 12:04:42

3 Q. But it says "...industry participants consistently 12:04:44
4 and knowingly misrepresented both the impact of 12:04:48
5 their product on users and the purpose of their 12:04:50
6 marketing activities." 12:04:50

7 Which are the industry participants that 12:04:52
8 you are referring to here? 12:04:54

9 A. Well, I mean, in this -- 12:04:56

10 MR. O'FALLON: Objection, asked and 12:04:56
11 answered. Remember, CTR is funded by the industry. 12:05:02

12 MR. FALKENSTEIN: Counsel, I have to ask 12:05:04
13 you to try to refrain from making statements on the 12:05:06
14 record that are improper. 12:05:12

15 A. I mean, I really have -- when I talk about "industry 12:05:16
16 participants consistently of their product," okay, 12:05:22
17 so here I am talking about somebody who has got a 12:05:26
18 product to sell, which I understand CTR in and of 12:05:30
19 itself does not have a product, CTR in and of itself 12:05:34
20 does not market cigarettes, but CTR in my view is a 12:05:40
21 mechanism via which the tobacco industry, the 12:05:46
22 tobacco product manufacturers, can engage in 12:05:50
23 marketing activities. 12:05:52

24 Q. But did CTR consistently and knowingly make 12:05:54
25 misrepresentations? That's my question. 12:06:00

1 A. Again, I have not looked at CTR individually, I have 12:06:06
2 looked at the record of the industry overall. 12:06:10
3 Q. So you don't know; is that your answer? 12:06:12
4 A. So I could not, as I sit here at the moment, I could 12:06:14
5 not -- I have not in my expert statement nor in my 12:06:18
6 work tried to say, okay, CTR, did they consistently 12:06:24
7 and knowingly engage in a record of 12:06:26
8 misrepresentations. 12:06:28
9 I have looked -- as I said, I have looked 12:06:32
10 at the overall industry. I haven't parceled out and 12:06:34
11 done an examination of CTR specifically. 12:06:36
12 Q. But someone in the industry did make 12:06:38
13 misrepresentations; is that your testimony? 12:06:40
14 A. Well, as I set out in my expert report here, that 12:06:48
15 there were misrepresentations by the industry, yes. 12:06:50
16 Q. And you aren't saying that you -- strike that, 12:06:52
17 please. 12:06:54
18 At this time you are not including CTR in 12:06:58
19 that statement; is that correct? 12:07:02
20 MR. O'FALLON: Objection, misstates the 12:07:04
21 record. 12:07:06
22 A. No, that's not correct. 12:07:06
23 Q. So you don't know. Do you know whether CTR 12:07:08
24 consistently and knowingly made misrepresentations; 12:07:12
25 yes or no, do you know whether they did? 12:07:14

1 MR. O'FALLON: Objection. You can't 12:07:16
2 instruct an answer -- a witness to answer the 12:07:18
3 question exactly the way you want him to. 12:07:24
4 MR. FALKENSTEIN: Well, he can answer yes 12:07:24
5 or no and then he can continue to answer, but it is 12:07:28
6 a yes or no question. 12:07:30
7 BY MR. FALKENSTEIN:
8 Q. Do you know whether CTR made consistent and knowing 12:07:30
9 misrepresentations? 12:07:32
10 A. CTR is a mechanism via which the industry is able to 12:07:38
11 make information available. Now, as I say, I have 12:07:44
12 not tried to separate out individual industry and 12:07:48
13 CTR, so I have not at this point in time attempted 12:07:54
14 to say that it was one party or the other. I am 12:07:58
15 looking at aggregate industry behavior. 12:08:02
16 Q. So at the moment you don't know; is that right? 12:08:04
17 A. At the moment, you know, I certainly don't say that 12:08:08
18 I would exclude CTR from the characterization of 12:08:12
19 being a mechanism for misleading statements. 12:08:18
20 But in terms of being able to say that, 12:08:20
21 well, look, these are the specific activities of 12:08:24
22 CTR, I have not tried to construct directly that 12:08:28
23 type... 12:08:28
24 Q. Are you going to? 12:08:30
25 A. You know, my plan was to really keep -- my purposes 12:08:40

1 were to look, more or less, at the industry level 12:08:44

2 and to talk about the behavior of the industry. 12:08:46

3 Until somebody tells me that, gee, it's 12:08:52

4 really important that we parcel this out, that it's, 12:08:54

5 you know, this much the industry, this much CTR, and 12:08:58

6 this much somebody else, I had not planned to at 12:09:06

7 trial, at least at the moment, to be able to take 12:09:10

8 CTR separately, because I think CTR is linked up 12:09:14

9 with everything that's going on in the industry 12:09:16

10 generally. 12:09:18

11 Q. Why do you think that? 12:09:18

12 A. Why do I think that? 12:09:20

13 Q. (Nodding.) 12:09:20

14 A. Because basically CTR is an association of the 12:09:28

15 tobacco companies, funded by the tobacco companies, 12:09:34

16 and so it's -- 12:09:38

17 Q. So it must be bad; is that right? 12:09:40

18 MR. O'FALLON: Objection. Ask a fair 12:09:44

19 question. Did he say "bad," has he used the word 12:09:46

20 "bad" at any point in time here? 12:09:46

21 MR. FALKENSTEIN: What I am trying to do 12:09:48

22 is -- I'm having frustration trying to get answers. 12:09:50

23 MR. O'FALLON: Well, then maybe you should 12:09:52

24 ask a right question. Okay? That's an 12:09:54

25 inappropriate question. 12:09:56

1 BY MR. FALKENSTEIN:

2 Q. You just stated that CTR receives funding from the 12:09:58

3 industry. I don't think anyone disputes that. 12:10:00

4	A.	Right.	12:10:00
5	Q.	Does that mean that it makes consistent and knowing	12:10:04
6		misrepresentations about the issues of tobacco and	12:10:08
7		health?	12:10:08
8	A.	I would say the fact that a trade association is	12:10:10
9		funded by industry participants does not in and of	12:10:14
10		itself say that that is a, quote, bad organization	12:10:18
11		or makes misleading statements; that in and of	12:10:22
12		itself does not.	12:10:24
13	Q.	What else do you rely upon, besides the fact that	12:10:28
14		CTR receives industry money?	12:10:28
15		MR. O'FALLON: Objection, asked and	12:10:30
16		answered, misstates his testimony.	12:10:36
17	A.	To say what, what else do I rely upon to say what?	12:10:38
18	Q.	You said a moment ago something that you base an	12:10:40
19		opinion -- a particular opinion on the fact that CTR	12:10:42
20		receives funds from the industry.	12:10:46
21	A.	No, I didn't say that.	12:10:46
22	Q.	What did you say?	12:10:50
23		MR. O'FALLON: Why don't you read it	12:10:50
24		back? If you have got a question about what he	12:10:52
25		said, read it back.	12:10:52

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1		MR. FALKENSTEIN: First I would like to	12:10:54
2		ask him what he said.	12:10:56
3		MR. O'FALLON: It's not a memory test.	12:10:58
4		Have it read back.	12:10:58
5		MR. FALKENSTEIN: He just told me he	12:11:00
6		didn't say that. So can he tell me what he said or	12:11:02

7 not? 12:11:02

8 MR. O'FALLON: You are not going to allow 12:11:06

9 the testimony to be read back, Eric? 12:11:08

10 MR. FALKENSTEIN: I am happy to do that. 12:11:08

11 Can you read the testimony in which the professor 12:11:10

12 responded to a question saying something about -- 12:11:12

13 first raising the issue of the funding of CTR by the 12:11:16

14 tobacco industry? 12:11:18

15 (Discussion off the record.) 12:12:58

16 MR. FALKENSTEIN: I'm going to drop the

17 line. 12:13:36

18 BY MR. FALKENSTEIN:

19 Q. If we could turn to the bottom of page 3. The last 12:14:12

20 sentence, the last full sentence says, "In fact, 12:14:16

21 programs sought to and did impact the size of the 12:14:18

22 market as well as shares of individual brands." 12:14:22

23 A. Correct. 12:14:22

24 Q. And then it says, "Trade associations issued press 12:14:26

25 releases, distributed millions of pamphlets, and 12:14:28

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1 placed officials as spokespersons on news 12:14:30

2 programs." 12:14:32

3 A. Um-hmm. 12:14:32

4 Q. Would you have anything to say in addition to what 12:14:42

5 you have already stated today about CTR's 12:14:44

6 involvement in these programs and CTR's involvement 12:15:00

7 in your perception of what went on according to this 12:15:02

8 statement? 12:15:06

9 A. You know, we are really back to where we have just 12:15:12
10 been. You know, I am looking at the overall set of 12:15:16
11 activities engaged in by industry participants, 12:15:20
12 including trade associations, and I haven't 12:15:26
13 specifically tried to take out and, you know, focus 12:15:32
14 in on CTR's role specifically because it is related 12:15:38
15 to the activities of the individual manufacturers. 12:15:44
16 So they are interlinked, and that's why I 12:15:48
17 look at it as a whole rather than to try to parcel 12:15:52
18 out the individual factors. 12:15:58
19 Q. In the last paragraph of page 4, the second sentence 12:16:02
20 begins, "The industry..." Could you read that 12:16:06
21 sentence and the next? 12:16:08
22 A. Sure. "The industry misrepresented the impact of 12:16:16
23 its product on consumers. It failed in its duty to 12:16:18
24 research and report on health questions for which it 12:16:22
25 proclaimed itself as having a basic 12:16:24

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1 responsibility." 12:16:24
2 Q. First, what was CTR's duty? 12:16:28
3 A. Well, again, I'm looking at the industry overall 12:16:40
4 rather than CTR specifically, so I have not tried to 12:16:44
5 parcel out what CTR's specific duty was. 12:16:48
6 Q. So can you state whether CTR has failed in its duty 12:16:52
7 to research and report on health questions for which 12:16:58
8 it proclaimed itself as having a basic 12:17:00
9 responsibility? 12:17:00
10 MR. O'FALLON: Well, it was TIRC that 12:17:02
11 originally set out that goal. 12:17:06

12 MR. FALKENSTEIN: TIRC or CTR.
13 MR. O'FALLON: The Frank Statement.
14 MR. FALKENSTEIN: I am not trying to trick 12:17:08
15 anyone with TIRC or CTR. So when I say CTR, you can 12:17:10
16 always include both if you like. 12:17:28
17 A. I mean, in terms of the representations, you know, 12:17:34
18 that's really what I cover under item IV-A beginning 12:17:38
19 on page 5. 12:17:48
20 Q. I mean, again, I think this is a simple question. 12:17:52
21 Do you think CTR has failed in its duty to research 12:17:54
22 and report on health questions for which it 12:17:56
23 proclaimed itself as having a basic responsibility? 12:18:02
24 A. Well, you know, TIRC -- this is over on page 5. 12:18:10
25 "...TIRC noted that the cigarette manufacturers 12:18:14

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1 accept an interest in people's health as a basic 12:18:16
2 responsibility," CTR Public Statement da-da-da. 12:18:20
3 "...the Tobacco Institute and its sponsors 12:18:22
4 described this as a basic responsibility," and so on 12:18:28
5 and so forth. 12:18:28
6 So, you know, the -- I guess, you know, 12:18:36
7 again, I look at the industry and I look at CTR as 12:18:42
8 being linked to the industry, you know, and I can't 12:18:44
9 crank them aside and put them aside because, you 12:18:48
10 know, TIRC is noting the cigarette manufacturers 12:18:52
11 accept this, da, da, and the Frank Statement, the 12:18:56
12 Tobacco Institute and its sponsors accept this as a 12:18:58
13 basic responsibility, so... 12:19:02

14 Q. Tell me if I am wrong. You can't state that as a 12:19:06
15 discrete organization CTR has failed in its duty to 12:19:10
16 research and report on health questions; is that 12:19:12
17 correct? 12:19:12
18 MR. O'FALLON: Objection, misstates the 12:19:14
19 testimony. 12:19:16
20 A. No. I am saying that line of trying to separate out 12:19:24
21 CTR or TIRC from the manufacturers themselves, you 12:19:30
22 know -- I mean, you see the linkage right here, 12:19:32
23 "...the Tobacco Institute and its sponsors 12:19:36
24 described this as a basic responsibility, paramount 12:19:38
25 to every other consideration in our business." 12:19:40

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1 So, you know, I collectively look at the 12:19:44
2 industry manufacturers and TIRC/CTR as linked 12:19:50
3 together. 12:19:50
4 Q. So collectively you think that the failure has 12:19:54
5 occurred; is that correct? 12:19:54
6 A. That's correct. 12:19:56
7 Q. Individually you can't say that CTR has failed; is 12:19:58
8 that correct? 12:20:00
9 MR. O'FALLON: Objection, misstates the 12:20:02
10 testimony. 12:20:02
11 A. You know, I don't think you -- it's not -- I don't 12:20:06
12 think you can separate out the two and look at them 12:20:10
13 discretely. 12:20:12
14 Q. I am going to end up having to move at trial that if 12:20:14
15 you have any discrete opinion about CTR with respect 12:20:18
16 to any duty it had, or promise it made, or failure 12:20:26

17 to complete its duty or responsibility, that it be 12:20:32
18 disallowed as a line of testimony. 12:20:36
19 MR. O'FALLON: Is that a question or a 12:20:38
20 statement? It's certainly not directed to him. So 12:20:42
21 is it directed to me? 12:20:42
22 MR. FALKENSTEIN: It's --
23 MR. O'FALLON: Is it a request that I go 12:20:44
24 back and have him look at all of CTR's information 12:20:46
25 and send you a supplemental report that talks about 12:20:48

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1 every misrepresentation or bad act or, overall, part 12:20:50
2 of the conspiracy CTR has been a part of? Would you 12:20:52
3 like that? I can do that in the form of a legal 12:20:54
4 brief. Do you want me to do that? 12:20:56
5 MR. FALKENSTEIN: You can do what you 12:20:58
6 want. 12:20:58
7 MR. O'FALLON: Okay.
8 MR. FALKENSTEIN: It's going to be an 12:20:58
9 objection and you can -- 12:21:00
10 MR. O'FALLON: Ask questions. Okay? 12:21:02
11 MR. FALKENSTEIN: Since specific questions 12:21:02
12 are being avoided -- 12:21:06
13 MR. O'FALLON: Nothing is being avoided. 12:21:06
14 MR. FALKENSTEIN: Or specific questions 12:21:08
15 can't be answered, they should be -- 12:21:10
16 MR. O'FALLON: You just don't like the 12:21:12
17 answers you are getting. 12:21:14
18 MR. FALKENSTEIN: It has nothing to do 12:21:16

19 with that, Counsel, and you know that. 12:21:16
20 MR. O'FALLON: You are not asking a 12:21:18
21 question. If you want to engage in colloquy, we 12:21:20
22 will engage in a little colloquy about it. 12:21:22
23 Are you now telling me you are bringing a 12:21:26
24 motion and we should be asking the Court for a 12:21:30
25 briefing schedule on it? 12:21:30

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1 BY MR. FALKENSTEIN:
2 Q. Are you planning to spring some surprise about CTR 12:21:34
3 that you are not going to reveal now that you may in 12:21:36
4 testimony at trial? 12:21:38
5 MR. O'FALLON: He said that he is 12:21:40
6 reserving the right to look at it. 12:21:42
7 BY MR. FALKENSTEIN:
8 Q. Are we going to find out about any sort of changes 12:21:44
9 in your perspective about CTR; are you going to 12:21:48
10 inform us of them? 12:21:50
11 MR. O'FALLON: Would you like me to send 12:21:52
12 you an amended report if we do so? 12:21:54
13 MR. FALKENSTEIN: I am asking, actually, 12:21:56
14 the witness. 12:21:56
15 MR. O'FALLON: Well, actually, he doesn't 12:21:58
16 communicate with you, Eric; I do. 12:22:00
17 BY MR. FALKENSTEIN: 12:22:00
18 Q. Are you planning to change your opinions about CTR? 12:22:04
19 That's just the question. 12:22:06
20 A. I sit here, I have an opinion at this moment. I 12:22:14
21 have no plans to engage in big surprises at trial. 12:22:22

22 Q. Okay. 12:22:22
23 MR. O'FALLON: If you want to make a 12:22:24
24 motion that you are a separate part of the industry 12:22:26
25 not connected with anybody else, you go ahead and 12:22:28

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1 make your motion. I will be more than happy to 12:22:30
2 oppose that. 12:22:32
3 MR. FALKENSTEIN: You know that's not what 12:22:34
4 we are getting at here, so let me move on. 12:22:38
5 BY MR. FALKENSTEIN:
6 Q. On the very bottom of page 4 and going on to page 5, 12:22:42
7 sub (i), (ii), (iii), and (iv), are you referring to 12:22:50
8 any CTR documents here? 12:22:52
9 A. Yes. 12:23:04
10 Q. Specifically which ones? 12:23:06
11 A. Well, there would be -- the ones mentioned in my 12:23:16
12 expert report would be the only ones I could cite to 12:23:20
13 you specifically at the moment. But, you know, I 12:23:22
14 have received a lot of CTR documents, you know, I 12:23:30
15 have reviewed them. I can't tell you the specific 12:23:40
16 ones at the moment, but I have referenced a couple 12:23:48
17 in my expert report and there are others. 12:23:50
18 Q. And are there any that are not on the list of 12:23:52
19 documents that counsel sent you that is sitting in 12:23:54
20 front of you at the moment? 12:23:56
21 A. Are there any CTR documents that I have reviewed and 12:24:00
22 rely upon other than the ones that were sent to me 12:24:02
23 by counsel? 12:24:04

24	Q.	That's correct.	12:24:04
25	A.	There are no documents of that type.	12:24:06

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1	Q.	If you turn to page -- the bottom of page 5 that you	12:24:12
2		referred to earlier, that full paragraph includes	12:24:16
3		some documents whose Bates numbers are -- and	12:24:24
4		correct me if I misread any of these --	12:24:26
5		MNAT00609873 --	12:24:32
6	A.	Yes.	12:24:32
7	Q.	-- CTR Public Statement 000015, and Document	12:24:40
8		11309817.	12:24:44
9		Is it necessary that someone have a degree	12:24:52
10		or expertise in your field to interpret these	12:24:56
11		documents?	12:24:58
12	A.	I would imagine it would depend on what they were	12:25:02
13		interpreting the documents for.	12:25:06
14	Q.	What is it about your expertise that enables you to	12:25:12
15		provide some expert information about these	12:25:14
16		documents?	12:25:14
17	A.	Well, as I have said a number of times to you	12:25:20
18		earlier, I am an expert in marketing and, you know,	12:25:26
19		this is basically -- these particular statements are	12:25:34
20		statements that the industry is making about how	12:25:40
21		they are going to behave.	12:25:42
22	Q.	Are they marketing statements?	12:25:42
23	A.	I would say they are business statements, which	12:25:46
24		includes marketing; they are general business	12:25:52
25		statements about business conduct.	12:25:54

1 Q. So you are stating that in part they are marketing 12:25:56
2 statements; is that correct? 12:25:58

3 A. Well, I am stating that they are business conduct 12:26:04
4 statements and marketing is a part of business. 12:26:10

5 MR. O'FALLON: Just another point just so 12:26:14
6 the record is clear. There are CTR documents that 12:26:18
7 have been produced by virtually all of the 12:26:20
8 defendants. So he may have CTR documents, that is, 12:26:22
9 documents either to or from CTR, that have been 12:26:24
10 produced by other defendants and may appear on here 12:26:28
11 as other defendants' Bates-stamped numbers. 12:26:30

12 I mean, one example I can think of off my 12:26:32
13 head, and I am not even sure it's in here, but I 12:26:34
14 know, for instance, there's a letter by American to 12:26:36
15 CTR that was produced by Philip Morris, so... 12:26:40

16 MR. FALKENSTEIN: But they're on the 12:26:42
17 list? 12:26:42

18 MR. O'FALLON: I'm not sure that one is. 12:26:42
19 That's just an example. What I am saying is there's 12:26:46
20 documents on the list that may not have been 12:26:48
21 produced by CTR that are nonetheless -- 12:26:50

22 MR. FALKENSTEIN: You said they relate to 12:26:52
23 CTR? 12:26:52

24 MR. O'FALLON: Right. They may even be 12:26:54
25 CTR documents, that is, they would be on the 12:26:56

1 letterhead of Council for Tobacco Research. 12:26:58

2 BY MR. FALKENSTEIN: 12:26:58

3 Q. If you could turn to page 7, please, the second 12:27:02

4 sentence in the paragraph that begins, "In addition 12:27:04

5 to..." 12:27:10

6 A. Right. 12:27:10

7 Q. Does that discuss adult smoking and then goes on to 12:27:18

8 the next paragraph, which starts to discuss underage 12:27:22

9 smoking; is that correct? 12:27:24

10 A. I'm sorry. Underage smoking? 12:27:26

11 Q. Yeah, or -- let me just see how you describe it. 12:27:30

12 Yeah, marketing to youth; in other words, marketing 12:27:36

13 tobacco products to youth. 12:27:38

14 Does CTR market tobacco products to 12:27:44

15 youth? 12:27:44

16 MR. O'FALLON: Objection, form. 12:27:48

17 A. Well, again, we are back to territory where we have 12:27:52

18 been. CTR, as I understand it, as an entity does 12:27:56

19 not in and of itself market products, but is a 12:28:00

20 mechanism via which the industry -- the cigarette 12:28:08

21 manufacturers do market their products. 12:28:14

22 Q. How, if at all, does CTR's -- is CTR involved in the 12:28:24

23 marketing of tobacco products to children? 12:28:28

24 A. Well, to the extent that CTR is used as a mechanism 12:28:40

25 for making the statement that we as the industry do 12:28:48

1 not market to youth, then -- and, you know, smoking 12:28:56

2 is an adult custom -- that influences the marketing 12:29:02

3 of the cigarettes. 12:29:04

4 Q. At the bottom of page 8, after describing some 12:29:18

5 principles, as you call them, it says, "...the 12:29:22

6 record of the industry is one of violation of these 12:29:24

7 principles on a continuing basis, engaging in 12:29:26

8 activities to diminish the negative perceptions 12:29:30

9 about the health impacts of cigarettes, inducing 12:29:34

10 more smokers to stay in the market and more starters 12:29:38

11 to enter into the market." 12:29:38

12 Do you believe CTR has been a part of 12:29:42

13 this? 12:29:42

14 A. I believe that CTR has been a mechanism for 12:29:50

15 communicating to diminish the negative perception of 12:29:54

16 the health impact of cigarettes, yes. 12:29:56

17 Q. In the second full paragraph of page 9 it starts, 12:30:06

18 "In 1958 executives from B.A.T. visiting the U.S. 12:30:12

19 and Canada to contact research scientists..." 12:30:16

20 Do you -- are you referring to CTR-funded 12:30:18

21 researchers or other researchers? 12:30:20

22 A. Well, let's see. There are some other and I know 12:30:30

23 they visited the TIRC scientific advisory board as 12:30:38

24 well, so I would think -- I think they visited like 12:30:44

25 35 people or so and made a couple of visits to 12:30:48

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1 TIRC. 12:30:48

2 So whether they specifically met with 12:30:54

3 anybody who was being funded by CTR for a research 12:30:56

4 program, I do not know. 12:31:00

5 MR. O'FALLON: And you know at that time 12:31:02

6 that CTR wasn't -- was TIRC? 12:31:06

7 MR. FALKENSTEIN: Okay. Again, we --

8 MR. O'FALLON: So there's no deception; I 12:31:08

9 just want to make it clear. 12:31:10

10 MR. FALKENSTEIN: That's fine. 12:31:10

11 MR. O'FALLON: So at this point in time 12:31:12

12 TIRC is the entity, CTR is still yet to come. 12:31:20

13 MR. FALKENSTEIN: You can say that. It's 12:31:20

14 certainly not what I am trying to get at. 12:31:22

15 BY MR. FALKENSTEIN:

16 Q. But, again, you are welcome to call TIRC CTR and 12:31:26

17 encompass it from 1954 to the present, and there is 12:31:30

18 going to be no trickery about that. 12:31:32

19 A. I know they visited the scientific advisory board. 12:31:34

20 What that constituted I was not able to glean from 12:31:38

21 the documents. 12:31:40

22 Q. You say in the middle of paragraph -- that 12:31:42

23 paragraph, "The strategy of the industry was to 12:31:46

24 isolate individual studies and argue that a 12:31:48

25 particular study did not prove the linkage." 12:31:52

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1 A. Um-hmm. 12:31:52

2 Q. Are you referring to any particular CTR study here? 12:31:54

3 A. I am not referring to any particular CTR study 12:32:00

4 there, no. 12:32:04

5 Q. To your knowledge, did CTR or CTR-funded researchers 12:32:10

6 do this? 12:32:10

7 A. Do what? 12:32:12

8 Q. That's not clear; let me restate it. Did CTR-funded 12:32:24
9 researchers generate studies that were isolated and 12:32:28
10 then used to argue that a particular study did not 12:32:30
11 prove the linkage? 12:32:32
12 MR. O'FALLON: Objection, misstates, I 12:32:34
13 believe, what that's trying to get at. 12:32:36
14 A. Yeah, that's not what this sentence is about. 12:32:40
15 Q. Well, were CTR studies used to isolate individual 12:32:44
16 studies and argue that a particular study did not 12:32:46
17 prove the linkage? 12:32:48
18 MR. O'FALLON: Objection to form. 12:32:52
19 A. Yeah, it's -- that's really not what I am trying to 12:32:56
20 say there. 12:32:58
21 Q. Well, you said, "The strategy of the industry was to 12:33:06
22 isolate individual studies and argue that a 12:33:08
23 particular study did not prove the linkage." 12:33:12
24 A. Right. 12:33:12
25 Q. Were any CTR studies used in that way? 12:33:18

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1 A. That's not what that sentence is about. I mean, you 12:33:28
2 know -- 12:33:28
3 Q. There were studies that were isolated and used to 12:33:34
4 show -- that did not prove a linkage, is that 12:33:38
5 correct, those studies existed? 12:33:40
6 MR. O'FALLON: Objection, form. 12:33:40
7 A. I think we missed a couple of words in the sentence 12:33:42
8 there or something, or I missed them. 12:33:44
9 Q. You said that there were -- is this correct, were 12:33:48

10 there studies that the industry argued did not prove 12:33:56
 11 the linkage; did such studies exist? 12:34:02
 12 A. Studies existed which the industry argued did not 12:34:06
 13 prove the linkage between smoking and negative 12:34:10
 14 health consequences. 12:34:12
 15 Q. To your knowledge, were any of those studies 12:34:14
 16 CTR-funded studies? 12:34:16
 17 A. To my knowledge -- 12:34:28
 18 Q. Were any of the studies you just referred to 12:34:34
 19 CTR-funded studies? 12:34:36
 20 MR. O'FALLON: Let him answer the 12:34:38
 21 question. 12:34:38
 22 A. I have not -- I don't have it in my head as to 12:34:46
 23 whether the study was non-CTR or CTR. In writing 12:34:52
 24 that sentence, I did not have CTR studies in mind 12:34:56
 25 when I wrote that sentence. But whether there would 12:35:00

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1 be some which fit the characterization, I am not 12:35:04
 2 sure. 12:35:04
 3 Q. To your knowledge at the moment, do any fit that 12:35:06
 4 characterization? 12:35:08
 5 A. The characterization -- at the moment I could not 12:35:12
 6 identify for you a CTR study that the industry 12:35:14
 7 isolated and argued that did not prove the linkage. 12:35:18
 8 MR. O'FALLON: We are heading toward -- 12:35:22
 9 MR. FALKENSTEIN: I would say only a few 12:35:24
 10 more minutes would do it. I am skipping almost 12:35:26
 11 everything that's left. 12:35:28
 12 BY MR. FALKENSTEIN:

13 Q. On page 12 in the paragraph that starts, "Thus -- 12:35:38
 14 A. Um-hmm. 12:35:38
 15 Q. -- throughout the time period the industry continued 12:35:40
 16 to cloud rather than clarify," it says, "Elementary 12:35:44
 17 issues of research methodology on the difference 12:35:48
 18 between statistical association and causation were 12:35:50
 19 developed into major campaigns and semantic games 12:35:54
 20 played regarding the meaning of causation and 12:35:56
 21 proof." 12:35:56
 22 Was CTR involved in the process you 12:35:58
 23 described here? 12:36:00
 24 A. Again, I haven't tried to isolate CTR as a separate 12:36:12
 25 entity from the manufacturers in making this 12:36:16

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1 statement. 12:36:16
 2 Q. And to your knowledge at the moment, are there any 12:36:20
 3 studies that would fit this description that were or 12:36:24
 4 are CTR-funded? 12:36:26
 5 MR. O'FALLON: Objection to form. 12:36:28
 6 A. Any studies that CTR did that fit what description? 12:36:34
 7 Q. Were there any CTR-funded studies, to your 12:36:38
 8 knowledge, whose -- in which elementary issues of 12:36:46
 9 research methodology on the difference between 12:36:48
 10 statistical association and causation were developed 12:36:52
 11 into major campaigns and semantic games played 12:36:54
 12 regarding the meaning of causation and proof? 12:36:58
 13 A. I would not say they were in my conception of what a 12:37:04
 14 CTR research study was that did that. 12:37:06

15 Q. Okay. Just briefly, on page 17 and continuing for 12:37:24
16 the next, say, five or six pages you have (a) 12:37:30
17 through E. 12:37:32
18 Let me just ask you: Was CTR involved in 12:37:34
19 target market selection as discussed beginning on 12:37:38
20 page 17? 12:37:40
21 A. Well, they were involved in the sense that, as I 12:38:00
22 have said before -- and we have already covered this 12:38:02
23 territory, about CTR being one of the mechanisms via 12:38:06
24 which the industry articulated the principles that 12:38:10
25 they would not target people who didn't already 12:38:20

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1 smoke and they wouldn't target people who were 12:38:22
2 thinking of quitting, CTR is a mechanism for 12:38:26
3 communicating that message. 12:38:28
4 As far as did CTR select target markets, 12:38:32
5 again, not having a -- CTR in and of itself not 12:38:38
6 having a product to -- not having cigarettes to 12:38:42
7 market in and of itself did not, in my opinion, 12:38:46
8 select target markets. 12:38:46
9 Q. Okay. And what about (b) on page 18, "Products and 12:38:50
10 Pricing"? I think -- and correct me if I am wrong, 12:38:52
11 if I am misstating, but I think you had already 12:38:56
12 stated that CTR is not related to products and 12:38:58
13 pricing. Is that still correct? 12:39:00
14 A. Well, when you say "related to" -- 12:39:02
15 MR. O'FALLON: I just want to object to 12:39:04
16 the characterization. 12:39:08
17 A. What I said earlier, I believe, was I was not going 12:39:10

18 to -- did not plan to offer any testimony about CTR 12:39:14
19 as a coordination mechanism on pricing among the 12:39:18
20 industry -- among the cigarette manufacturers. 12:39:22
21 Again, CTR has a role in influencing 12:39:28
22 consumers' perceptions of the health effects and the 12:39:36
23 addictiveness of cigarettes. But CTR, again, does 12:39:42
24 not in and of itself market cigarettes, so they are 12:39:46
25 different from the cigarette manufacturers in that 12:39:50

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1 regard. 12:39:50
2 Q. Okay. And (c) is: "Advertising and Promotion." Is 12:39:54
3 CTR involved in advertising and promotion? 12:39:56
4 A. Well, again, it would be pretty much the answer that 12:40:06
5 I have just given on the other elements of the 12:40:08
6 marketing mix, that CTR was a contributor to some 12:40:18
7 information about who was going to be advertised to, 12:40:22
8 what advertising would be useful, but they don't 12:40:24
9 have cigarettes to advertise or to promote 12:40:28
10 themselves. 12:40:30
11 Q. And how about (d), "Distribution"? 12:40:32
12 A. Well, that would be similar, that if you want to 12:40:36
13 talk about distribution -- I am talking about 12:40:38
14 distribution of cigarettes. And CTR in and of 12:40:40
15 itself as an entity, as I understand it, did not 12:40:44
16 have cigarettes to distribute. 12:40:46
17 Q. And what about "Youth Marketing Activities," E? 12:40:48
18 A. What's your question with respect to it? 12:40:54
19 Q. Is CTR involved in youth marketing activities? 12:40:56

20 MR. O'FALLON: Objection, asked and 12:41:00
21 answered. 12:41:04
22 A. Yeah. I mean, in terms of stating what the -- how 12:41:12
23 the industry was going to behave, I mean, CTR had a 12:41:16
24 role in that, yeah, as set out on page 23 there. 12:41:26
25 Q. How is it set out on page 23 that CTR is involved in 12:41:30

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1 youth marketing activities? 12:41:32
2 A. Well, in terms of specifying the behavior that the 12:41:36
3 industry is going to adopt. 12:41:40
4 MR. O'FALLON: Are you confusing the 12:41:44
5 Tobacco Institute with CTR there? 12:41:50
6 THE WITNESS: Oh, yeah, I guess these 12:41:52
7 specifically mention the Tobacco Institute rather 12:41:54
8 than CTR. 12:41:56
9 A. Yeah, I think -- again, the industry, the industry 12:42:04
10 has set out that smoking is an adult custom and we 12:42:10
11 are not going to market to youth. I haven't tried 12:42:12
12 to trace back the extent that CTR has been a factor 12:42:16
13 in communicating that message. 12:42:18
14 Q. Okay. Finally, the very last two paragraphs of your 12:42:22
15 report and then I am done. 12:42:22
16 MR. O'FALLON: Can we just take a quick 12:42:30
17 five minutes and be back? 12:42:32
18 MR. FALKENSTEIN: Sure, that's fine. And 12:42:36
19 then I will be done in less than five. 12:42:38
20 MR. O'FALLON: Just five minutes, that's 12:42:40
21 all I need. 12:42:40
22 (Break taken.) 12:42:40

23 MR. FALKENSTEIN: Back on the record. 12:45:18
24 BY MR. FALKENSTEIN:
25 Q. So I just wanted to turn, finally, Professor, to the 12:45:22

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1 bottom of page 31 and page 32. 12:45:24
2 A. Okay. 12:45:26
3 Q. The first sentence -- and correct me if I am wrong 12:45:28
4 in reading this -- "The net result of this massive 12:45:30
5 mix of activities consistently applied is clear: 12:45:34
6 the industry sold more than it otherwise would have 12:45:36
7 as some people valued smoking more highly." 12:45:38
8 Were there any activities of CTR that 12:45:42
9 resulted in some people valuing smoking more highly? 12:45:46
10 A. Yeah, I would say so. I mean, if you go back to the 12:45:52
11 whole thing starts in 1954 with -- I think it's 12:45:58
12 '54 -- with the Frank Statement and TIRC basically 12:46:04
13 saying, look, some questions have been raised, we 12:46:08
14 are going to assess them, and we will engage in this 12:46:12
15 research program. 12:46:14
16 And so the research programs are set up, 12:46:18
17 it's a big activity, and then these -- as I 12:46:22
18 mentioned on the top of page 31, we have all these 12:46:24
19 press releases and spokespersons claiming it's an 12:46:26
20 open controversy, we have been researching this 12:46:30
21 question, we have been actively engaged in looking 12:46:34
22 at it, and we don't believe cigarettes are 12:46:36
23 hazardous. 12:46:38
24 So, I mean, the activities of TIRC/CTR 12:46:46

25 were used to sort of perpetuate this notion of it's 12:46:48

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1 an open controversy and the negative health 12:46:50

2 consequences really haven't been shown. 12:46:52

3 Q. I don't want to state what you just said, restate 12:46:56

4 what you just said, because I know there will be an 12:46:58

5 objection. 12:46:58

6 Can you take us -- assuming that CTR has 12:47:04

7 made the statements you say it has and assuming that 12:47:06

8 it has done the research that it has done, what is 12:47:10

9 the next step in the process of making people value 12:47:16

10 smoking more highly resulting from CTR's 12:47:24

11 activities? 12:47:24

12 MR. O'FALLON: Objection, form. 12:47:26

13 A. Okay. Well, I mean, the way I look at it, you know, 12:47:28

14 it starts out in 1954 with the industry and TIRC 12:47:32

15 assuming the basic responsibility for checking out 12:47:34

16 the health questions; then putting in place CTR, 12:47:42

17 which does a number of research studies. 12:47:44

18 So it's research that's giving credibility 12:47:48

19 to the claim that we are examining these questions. 12:47:52

20 And then the promise was that we will in a timely 12:47:56

21 fashion report to you the facts of our 12:47:58

22 investigation. 12:48:00

23 So it's a big -- what's communicated to 12:48:06

24 the public is there's a big research effort underway 12:48:08

25 here and, you know, we just don't know, there's -- 12:48:12

1 questions keep coming up and, you know, it's an open 12:48:16
2 debate. 12:48:18
3 And so rather than an alternative, you 12:48:20
4 know, an alternative being that, yeah, our products 12:48:24
5 really do have health problems, I mean, that 12:48:28
6 fostering of the notion of an open debate and we are 12:48:32
7 not really sure increases the value that a customer 12:48:34
8 perceives in cigarette smoking relative to the state 12:48:40
9 of the world where the industry didn't make any 12:48:42
10 promise to investigate the question and didn't set 12:48:46
11 up a big research activity to take a look at the 12:48:48
12 question. 12:48:48
13 Q. In this case, unlike the rest of your testimony, are 12:48:54
14 you isolating individual actions or activities of 12:48:56
15 CTR that affect this mix? 12:48:58
16 A. You know, I am not -- again, I think in everything 12:49:04
17 that I -- in the approach I am taking, it really is 12:49:08
18 looking at the industry and not trying to parcel out 12:49:12
19 so much. 12:49:12
20 But, I mean, I think where TIRC is the 12:49:16
21 mechanism, as I understand it, by which the Frank 12:49:18
22 Statement is originally made and then CTR being set 12:49:20
23 up as a research organization, it's a mechanism via 12:49:24
24 which the industry can say, look, we are looking at 12:49:28
25 these questions and, you know, we have got -- CTR is 12:49:32

1	doing all this research.	12:49:32
2	And so it gives credibility to the claim	12:49:34
3	that they are making that we are really	12:49:38
4	investigating these questions.	12:49:38
5	Q. Do you know if individuals in society have relied on	12:49:44
6	statements made by CTR?	12:49:46
7	MR. O'FALLON: Objection, form.	12:49:48
8	A. I think, you know, what I have tried to look at is	12:49:52
9	the overall information which is presented via an	12:50:00
10	aggregate of things. So I haven't tried to parcel	12:50:04
11	out an individual statement, but I have looked at	12:50:06
12	the overall collection.	12:50:08
13	Q. Do you feel that as a collective society that	12:50:12
14	perceptions of the health effects of smoking have	12:50:16
15	been affected by any statements or lack of	12:50:18
16	statements by CTR?	12:50:20
17	A. I feel that the perceptions of smoking have been	12:50:32
18	impacted by statements of CTR. That's going back to	12:50:34
19	the Frank Statement saying, look, we accept this	12:50:36
20	basic responsibility. And then engaging in this	12:50:40
21	research program and then reporting out the results	12:50:44
22	that, you know, it's an open question.	12:50:46
23	Yeah, I think that has the impact on	12:50:50
24	consumers of saying, well, you know, they promised	12:50:56
25	to do the research, they are doing the research, and	12:50:58

1 they are not finding any, so... 12:51:00

2 Q. Do you know any individual who has relied on 12:51:04

3 statements or lack of statements by CTR? 12:51:06

4	MR. O'FALLON: Objection.	12:51:08
5	A. Has anyone --	12:51:10
6	Q. Let me restate it. Do you know of any individual	12:51:12
7	personally, do you know of any individual who has	12:51:16
8	relied on any statement made by CTR about smoking	12:51:20
9	and health?	12:51:20
10	A. There is no individual who has said to me I relied	12:51:28
11	upon TIRC statements. I have not asked any	12:51:32
12	individual that question. I mean, I may know	12:51:38
13	somebody, but they haven't communicated that to me.	12:51:42
14	So nobody has communicated to me that they do it.	12:51:46
15	I mean, it's my belief, as I just	12:51:48
16	articulated, you know, that the overall environment	12:51:52
17	of the Frank Statement and the long record of	12:51:54
18	research and references to that research would	12:51:56
19	influence consumers' perceptions of the consequences	12:52:00
20	of smoking and consequently the value of smoking to	12:52:06
21	them.	12:52:06
22	But in terms of do I know an individual --	12:52:10
23	has any individual communicated to me that I relied	12:52:12
24	upon, I read TIRC -- I read the Frank Statement?	12:52:16
25	There is no individual who has communicated that to	12:52:20

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1	me.	12:52:20
2	Q. Are you aware of whether or not CTR has funded	12:52:24
3	research whose results would be deemed adverse to	12:52:28
4	the interests of the tobacco industry?	12:52:34
5	A. I haven't really examined the results of the	12:52:38

6 CTR-funded research to be able to say that, so I 12:52:44
7 couldn't say one way or the other. 12:52:48
8 Q. Do you know how many research projects CTR has 12:52:50
9 funded since its inception? 12:52:52
10 A. I couldn't give you a number on that, no. 12:52:56
11 Q. Would it surprise you if dozens of CTR research 12:53:00
12 funded -- dozens of CTR-funded research projects had 12:53:04
13 yielded results that linked tobacco to adverse 12:53:08
14 health effects? 12:53:08
15 MR. O'FALLON: Objection. Are you making 12:53:10
16 that statement? 12:53:12
17 MR. FALKENSTEIN: I am asking a question. 12:53:14
18 BY MR. FALKENSTEIN:
19 Q. Would it surprise you? 12:53:16
20 A. Would it surprise me that -- well, again, as we have 12:53:22
21 talked about already, I don't understand -- you 12:53:24
22 know, I never really looked into CTR's funding 12:53:28
23 mechanism. 12:53:32
24 So would it surprise -- given that, I 12:53:42
25 mean, would it surprise me if you told me that there 12:53:44

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1 were research studies which CTR funded that showed a 12:53:46
2 link between smoking and negative health effects? I 12:53:52
3 guess it would not be a total surprise to me if you, 12:53:54
4 in fact, showed me studies of that type. 12:53:58
5 Q. And along the same lines, would it surprise you if 12:54:00
6 the surgeon general had cited CTR reports -- 12:54:02
7 CTR-funded research in its reports about smoking and 12:54:04
8 health? 12:54:04

9 A. No, that wouldn't surprise me. 12:54:08

10 Q. So how does the fact that there may be CTR-funded 12:54:16

11 research that have yielded adverse results to the 12:54:20

12 industry enter into the mix of your opinion about 12:54:24

13 CTR's contribution to the open-ended question of 12:54:28

14 smoking and health? 12:54:28

15 A. Well, in the ways I have articulated a few minutes 12:54:32

16 ago, that basically -- I would be repeating myself, 12:54:38

17 but it's basically to say, look, TIRC was a 12:54:42

18 mechanism via which the Frank Statements were made 12:54:44

19 that we are going to do research and we will let you 12:54:46

20 know, we will report out on this research in a 12:54:50

21 timely and factual, unbiased manner. And then CTR 12:54:56

22 was set up, a large activity to give credibility to 12:55:00

23 the claim that they would report out. 12:55:04

24 But then the message which comes out of 12:55:06

25 the industry is, look, it's an open debate, we just 12:55:08

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1 don't know, these are complicated questions. 12:55:10

2 Q. And the very last thing that I have for you is in 12:55:14

3 the very last paragraph. The third sentence begins, 12:55:16

4 "The antismoking position has been articulated by a 12:55:20

5 host of sources, including Reader's Digest, the 12:55:24

6 surgeon general, down to local town meeting members 12:55:26

7 and private citizens." 12:55:28

8 A. Right. 12:55:28

9 Q. So you agree with that statement, since it's your 12:55:30

10 own, right? 12:55:32

11 A. Yes. 12:55:32

12 Q. "The discussions have not been without emotion. 12:55:34

13 These information sources have shaped and influenced 12:55:38

14 the public's attitudes and beliefs about 12:55:40

15 cigarettes." Is that a correct reading? 12:55:42

16 A. That is a correct reading. 12:55:42

17 Q. So do you believe that generally the public had an 12:55:46

18 awareness of the health effects of tobacco use? 12:55:54

19 A. Well, you know, it obviously varied over time and 12:55:56

20 obviously varied about what you mean by "knowledge" 12:55:58

21 of health effects. 12:56:02

22 I mean, I think there has been a number 12:56:04

23 of, you know, surgeon general studies saying -- 12:56:06

24 there have been a number of studies which have asked 12:56:08

25 people, you know, gee, do you think smoking is 12:56:10

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1 hazardous to your health. And some percentage of 12:56:12

2 them answer yes or no. But exactly, you know, what 12:56:16

3 the full details of that are, the depth of the 12:56:20

4 knowledge, I think, has been questioned. 12:56:22

5 Q. And do you believe that if someone knew of the kinds 12:56:30

6 of things you discussed in that quotation that their 12:56:32

7 awareness of the health effects of using tobacco 12:56:36

8 might have been affected by CTR anyway? 12:56:38

9 A. That's correct, yeah, that what I am basically 12:56:44

10 saying there is that there's information in the 12:56:48

11 environment, and I am not denying that there was -- 12:56:52

12 I mean, the point of the paragraph is to say that 12:56:56

13 the information that is being disseminated by the 12:57:00

14 tobacco industry is going to be processed by 12:57:02
15 consumers along with the other information that they 12:57:04
16 have from other sources. 12:57:06
17 So I am not denying that there was the, 12:57:08
18 quote, antismoking position being articulated and 12:57:12
19 that would impact the reception of the tobacco 12:57:16
20 industry's message conversely. 12:57:20
21 Q. And generally the antitobacco position and 12:57:22
22 statements were well-known to society; is that 12:57:26
23 correct? 12:57:26
24 A. No; I would not agree with that general statement, 12:57:30
25 no. 12:57:30

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1 Q. What is it that you would agree with, then? 12:57:34
2 MR. O'FALLON: Objection. 12:57:34
3 MR. FALKENSTEIN: Let me state a different 12:57:36
4 question. 12:57:38
5 MR. O'FALLON: I agree with a lot of it. 12:57:42
6 BY MR. FALKENSTEIN:
7 Q. What was it that relates to the question I just 12:57:42
8 asked -- 12:57:44
9 A. Right. 12:57:44
10 Q. -- that you would state was a general state of 12:57:46
11 awareness of society -- of individuals in this 12:57:48
12 country as to the health effects of tobacco? 12:57:52
13 A. Well, I think over time, I mean, there have been a 12:57:56
14 number of, you know, studies done asking people do 12:57:58
15 you believe smoking is hazardous to your health. 12:58:02

16 And over time that percentage has 12:58:04
17 increased and, you know, by the '80s the majority of 12:58:10
18 the people are answering, yes, I do believe it's 12:58:12
19 hazardous to my health. 12:58:14
20 But, I mean, the depth of that knowledge 12:58:16
21 and what exactly people were meaning by "hazardous," 12:58:20
22 that's -- you know, that's still another question. 12:58:24
23 MR. FALKENSTEIN: Okay. Thanks, Doctor. 12:58:26
24 I don't have further questions. I will reserve the 12:58:30
25 right for counsel to ask further questions. And I 12:58:32

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1 apologize that we have gone so long at this point. 12:58:34
2 THE WITNESS: No problem. 12:58:36
3 (Lunch break.) 12:58:42
4 MR. PURVIS: Back on the record. 01:48:08
5 CONTINUED EXAMINATION
6 BY MR. PURVIS: 01:48:08
7 Q. Professor Dolan -- 01:48:10
8 MR. O'FALLON: Before we go forward, can I 01:48:12
9 just put on the record that -- 01:48:12
10 MR. PURVIS: Sure.
11 MR. O'FALLON: We are producing to the 01:48:14
12 Defendants the journal articles that have been 01:48:16
13 authored by Mr. Dolan with the exception of one. If 01:48:20
14 you would just identify the one we are not. 01:48:20
15 THE WITNESS: Yeah. It's number 18, "The 01:48:24
16 Costs of Model Overfitting." 01:48:26
17 MR. O'FALLON: And he couldn't find that, 01:48:28
18 nor was there a copy in the library. 01:48:30

19 THE WITNESS: 1979.

20 MR. O'FALLON: But other than that, we 01:48:32

21 have got everything else here for you and give that 01:48:34

22 to you. 01:48:34

23 MR. PURVIS: Thank you. A little light 01:48:36

24 reading. 01:48:44

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1 BY MR. PURVIS:

2 Q. Mr. Falkenstein made reference to Defendants' 01:48:46

3 Exhibit 3306, which I am now handing you. Can you 01:48:48

4 identify this as a copy of your expert report in 01:48:52

5 this matter? 01:48:52

6 A. Yes, it is. 01:48:54

7 Q. And is that your signature that appears on page 32? 01:49:02

8 A. Yes, it is. 01:49:06

9 Q. Do you have another page besides that? 01:49:10

10 A. I have a page 33, which is published materials 01:49:12

11 reviewed by Professor Dolan. 01:49:16

12 Q. I don't have that one. 01:49:18

13 I would like to discuss with you the 01:49:22

14 methodology you used in creating Defendants' 01:49:26

15 Exhibit 3306. First, when did you begin preparation 01:49:30

16 of this document? 01:49:32

17 A. Preparation of the document specifically, as opposed 01:49:36

18 to when did I begin working on the case? 01:49:38

19 Q. That's a good point. Let's say: When did you begin 01:49:40

20 doing whatever work has resulted in this document? 01:49:44

21 A. Well, just after the first of this year I started my 01:49:52
22 work on the case. 01:49:54
23 Q. Was that in connection with the meeting you had here 01:49:58
24 in Minneapolis with the lawyers? 01:49:58
25 A. I think just prior to the meeting I had a couple of 01:50:02

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1 telephone calls and received some background 01:50:06
2 information, mostly like surgeon general reports, 01:50:10
3 that kind of thing. 01:50:12
4 And then the work really started, you 01:50:14
5 know, kind of developing out of the area -- you 01:50:18
6 know, the subject I would testify to. And that sort 01:50:20
7 of thing started at the end of January. 01:50:22
8 Q. Can you describe for me everything that you did 01:50:24
9 leading up to the submission of this report? 01:50:28
10 MR. O'FALLON: I am going to object as 01:50:32
11 overbroad. 01:50:36
12 A. I will try to give you my sense of it and then, 01:50:38
13 obviously, point me to more specifics if you like. 01:50:44
14 I guess I started out by first using the 01:50:54
15 documents to get some kind of understanding of the 01:50:56
16 marketing practices. 01:50:58
17 You know, I met with the lawyers at the 01:51:02
18 end of January to basically discuss my perceptions 01:51:06
19 of things and what I thought would be reasonable 01:51:10
20 framing of my assignment. 01:51:12
21 Q. I apologize. I don't mean to interrupt. I want to 01:51:16
22 go through this as quickly as we can, but if I could 01:51:18
23 just ask a clarifying point. 01:51:20

24 A. Yeah. 01:51:20
25 Q. When you say began your review of "the documents," 01:51:22

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1 what documents are you referring to? 01:51:24
2 A. Well, prior to the first meeting it would have just 01:51:28
3 been -- I don't believe there are any internal, 01:51:32
4 like, confidential documents. I think I first 01:51:38
5 started out by looking at some surgeon general 01:51:44
6 reports, FTC kind of stuff, maybe -- 01:51:48
7 Q. Would those be the materials referenced on page 33 01:51:52
8 of Exhibit 3306? 01:51:54
9 A. Some of it, yeah, some of it would be that. I'm 01:52:00
10 honestly not sure that that's precisely the full set 01:52:06
11 of it. 01:52:10
12 But I think first -- you know, the idea 01:52:12
13 was first to kind of get an overview of what some of 01:52:14
14 the issues were using documents which weren't 01:52:16
15 confidential. 01:52:16
16 And then, as I say, we met toward the end 01:52:20
17 of January and talked about the nature of the case 01:52:24
18 and the scope of my work. 01:52:26
19 And from there I specified what documents 01:52:30
20 I would like to see relating to a particular set of 01:52:36
21 subjects, as we talked about this morning. I 01:52:40
22 received those documents. 01:52:40
23 Q. When? 01:52:42
24 A. I would say really right after the meeting in late 01:52:48
25 January. So, you know, around the beginning of 01:52:54

1 February of this year. 01:52:54

2 Q. Am I correct that there were two meetings with the 01:52:58

3 lawyers in January? 01:52:58

4 A. No, no. 01:52:58

5 Q. Just one? 01:53:00

6 A. Just one. 01:53:00

7 Q. And it occurred in late January 1997? 01:53:02

8 A. That's correct, that's correct. And so then almost 01:53:06

9 immediately thereafter that meeting, you know, I got 01:53:10

10 an initial wave of documents, kind of went through 01:53:12

11 them, and then was able to be a little more specific 01:53:16

12 about this is what I would like to see more of and 01:53:20

13 so forth. 01:53:20

14 And that process kind of went back and 01:53:22

15 forth as I made my way through the documents, and 01:53:24

16 then it got up to the point of -- I think I came out 01:53:30

17 sometime in April. 01:53:32

18 Q. To Minneapolis? 01:53:34

19 A. Yes, back to Minneapolis here. And I sort of went 01:53:38

20 through how I saw my expert report shaping up in the 01:53:44

21 subject areas that I would address in my expert 01:53:46

22 report and so forth. And then I began the writing 01:53:50

23 of my expert report from there. 01:53:52

24 Q. You have written expert reports for other litigation 01:53:56

25 matters, haven't you? 01:53:58

1 A. Yes. 01:54:00

2 Q. For Defendants' Exhibit 3306 did you follow a format 01:54:06

3 that you had used in prior litigation expert 01:54:10

4 reports? 01:54:10

5 A. Only as far as -- well, I guess sections I, II, and 01:54:18

6 III about personal background, subject matter of 01:54:22

7 testimony, and summary of opinions held, I think -- 01:54:26

8 and outline of anticipated testimony -- I think, 01:54:30

9 yeah, I have sort of used that general format 01:54:32

10 before. But, you know, substantively within a 01:54:38

11 section, you know, obviously it's particular to this 01:54:42

12 case. 01:54:42

13 Q. I want to see if we can just make sure once and for 01:54:48

14 all we have clarified that -- I want to try to 01:54:52

15 establish clearly for the record the totality of the 01:54:58

16 materials that you have relied on in arriving at 01:55:00

17 this opinion. 01:55:02

18 A. Okay. 01:55:02

19 Q. And in particular we have marked the computer 01:55:04

20 printout listing of Bates numbers as, I believe, 01:55:06

21 3303. And those represent documents that were sent 01:55:14

22 to you and are in your possession, correct? 01:55:16

23 A. Correct, right; that's my belief, right. 01:55:20

24 Q. We had 3303A, which was the listing of the Edward R. 01:55:26

25 Murrow program? 01:55:28

1 A. Right. 01:55:32

2 Q. And you were uncertain as to whether that was in 01:55:34
3 your possession, but if it is, you relied on it as 01:55:36
4 well? 01:55:36

5 A. If it is, I read it. Whether it sort of was 01:55:40
6 something that, you know, kind of impacted my 01:55:42
7 opinion or has impacted my opinions, I can't recall 01:55:46
8 as I sit here. 01:55:46

9 Q. And then we marked as Defendants' Exhibit 3305 the 01:55:54
10 letter from Ms. Sutton to Mr. Schwartzbauer, which 01:55:58
11 supplemented the materials that you had received. 01:56:02
12 In fact, you did receive the materials described in 01:56:04
13 3305? 01:56:06

14 A. I did, yes. 01:56:06

15 Q. And page 33 of your expert report, which is 3306, 01:56:12
16 lists surgeon general reports and other matters. 01:56:16
17 And you received those as well, correct? 01:56:18

18 A. Well, some of them I didn't receive. The annual 01:56:22
19 reports there, the last two items, the RJR and 01:56:28
20 Philip Morris annual reports, the last two items on 01:56:32
21 page 33, I went over to the library at Harvard 01:56:36
22 Business School and read them there rather than got 01:56:38
23 them from the lawyers. 01:56:38

24 Q. Other than those annual reports, is it a fair 01:56:46
25 statement that all of the other materials were sent 01:56:52

1 to you by the lawyers? 01:56:56

2 A. Sent to me or maybe a couple of them were handed to 01:56:58
3 me. 01:56:58

4 Q. Provided to you? 01:56:58

5 A. Provided, yes. 01:57:00
6 Q. What materials other than the ones we have just 01:57:06
7 enumerated in these various exhibits did you rely on 01:57:10
8 in reaching your opinions in this case as expressed 01:57:14
9 in 3306? 01:57:16
10 A. Specific materials, I would say that's the set. 01:57:24
11 But, you know, I obviously used my general 01:57:26
12 understanding of marketing and the study that I've 01:57:30
13 done in my profession, is part of something I bring 01:57:34
14 to formulating my opinion and expressing it in the 01:57:38
15 expert report. 01:57:40
16 Q. Is it a fair characterization that you applied your 01:57:44
17 expertise to the materials that had been provided to 01:57:46
18 you and the annual reports that you got yourself? 01:57:52
19 MR. O'FALLON: Objection, form. 01:57:54
20 A. It's a fair statement that the documents that I 01:57:58
21 relied upon in terms of the specifics of this case 01:58:04
22 were as, you know, supplied to me in answer to my 01:58:10
23 requests for information, right. 01:58:12
24 Q. Are there any other documents that we haven't 01:58:14
25 discussed in this five minutes past that you've used 01:58:18

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1 and relied on in arriving at your opinions in this 01:58:22
2 case? 01:58:22
3 A. No, I wouldn't say so. 01:58:24
4 Q. Have you conducted any independent research to 01:58:30
5 assist you in arriving at the opinions you've 01:58:34
6 expressed in Defendants' 3306? 01:58:36

7	A.	By "independent research" you mean going out and	01:58:40
8		collecting other data?	01:58:42
9	Q.	That would be one example. Have you done any of	01:58:48
10		that?	01:58:48
11	A.	No, I have not done that.	01:58:50
12	Q.	Another example might be going to the Harvard	01:58:52
13		library and looking at authoritative texts or	01:58:54
14		treatises. Have you done any of that?	01:58:56
15	A.	You know, I did go look, but there wasn't anything	01:59:02
16		that was particularly informative to me.	01:59:04
17	Q.	What subject were you looking under?	01:59:06
18	A.	I forget whether it was tobacco or cigarettes; one	01:59:12
19		of those two.	01:59:14
20	Q.	What finding aid were you using in that search?	01:59:18
21	A.	Finding aid?	01:59:22
22	Q.	Something like Nexis or the Reader's Guide to	01:59:24
23		Periodicals.	01:59:26
24	A.	Oh. Yeah, the electronic listing of -- the card	01:59:32
25		catalog gone electronic at Harvard library.	01:59:34

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1	Q.	Is there a name for that system?	01:59:38
2	A.	I don't think so.	01:59:42
3	Q.	In California they call it ERIC or something like	01:59:44
4		that.	01:59:44
5	A.	No, this is just our local -- you know, just taking	01:59:48
6		the card catalog and throwing it up on electronic	01:59:52
7		form, I think.	01:59:52
8	Q.	Any other research that you conducted?	01:59:56
9	A.	No. I mean, the only -- the reason I was asking for	02:00:00

10	clarification, you know, I consider reading	02:00:04
11	documents and formulating opinions based on those --	02:00:08
12	I consider that research. So that's the only	02:00:10
13	question I have.	02:00:12
14	But in terms of going outside of the	02:00:14
15	documents, you know, that we have already talked	02:00:20
16	about, I didn't conduct research to add to that	02:00:24
17	database, no.	02:00:26
18	Q. You are not a medical doctor, are you?	02:00:34
19	A. No, I am not.	02:00:36
20	Q. Are you a historian?	02:00:42
21	A. Well, not in the formal sense of the word, no.	02:00:46
22	Q. Are you a medical historian?	02:00:48
23	A. No, I am not a medical historian.	02:00:50
24	Q. Do you have any training in pharmacology?	02:00:56
25	A. No, I do not.	02:00:58

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1	Q. Do you have any training in toxicology?	02:01:00
2	A. No, I do not.	02:01:00
3	Q. Have you conducted any research in the state of	02:01:16
4	Minnesota in support of the opinions you are	02:01:20
5	offering in this case?	02:01:20
6	MR. O'FALLON: Objection, form.	02:01:22
7	A. Well, again, I conducted -- I have not gone out and	02:01:34
8	tried to collect information within the state of	02:01:36
9	Minnesota.	02:01:38
10	Q. You haven't done any polling of Minnesota citizens?	02:01:40
11	A. I have not, no.	02:01:42

12 Q. Have you ever lived in the state of Minnesota? 02:01:44
13 A. No, I have not. 02:01:44
14 Q. Have you ever worked in the state of Minnesota? 02:01:46
15 A. No, I have not. 02:01:48
16 Q. Have you had any contacts with the state of 02:01:50
17 Minnesota other than the three and possibly four 02:01:54
18 litigation matters we discussed this morning? 02:01:58
19 MR. O'FALLON: Objection. 02:01:58
20 A. Contact with the state of Minnesota? 02:02:02
21 Q. Resided in the state, for example, or done business 02:02:06
22 in the state. 02:02:08
23 A. Well, I have had -- let's see. I did some 02:02:12
24 consulting with Honeywell -- well, more executive 02:02:18
25 education than consulting, you know, aside from the 02:02:26

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1 litigation matter. Maybe 3M. But that would be 02:02:32
2 it. No sustained presence in the state. 02:02:36
3 Q. Have you taken any efforts to determine what the 02:02:42
4 people of Minnesota have known about the risks of 02:02:44
5 cigarette smoking since 1950? 02:02:50
6 MR. O'FALLON: Objection to form. 02:02:52
7 A. I have tried to assess what people generally knew 02:03:02
8 about the risks of smoking generally throughout the 02:03:12
9 country. I have not looked at Minnesota as a 02:03:14
10 specific population in that. 02:03:18
11 Q. Could you describe for me everything that you have 02:03:22
12 done to determine what the people of the United 02:03:24
13 States have generally known about the risks of 02:03:26
14 cigarette smoking? 02:03:26

15 A. Well, I have reviewed the documents that we've 02:03:30
 16 talked about. 02:03:30
 17 Q. Meaning the tobacco company documents and those 02:03:34
 18 others described in Exhibits 3303, 3303A, and 35, as 02:03:42
 19 well as page 33 of your expert report? 02:03:46
 20 A. Right. Yeah, the full set of documents that we have 02:03:48
 21 been talking about in our conversation. 02:03:50
 22 Q. Can we just come to an agreement that let's come up 02:03:54
 23 with something where we will call -- let's just say 02:03:56
 24 "the tobacco company documents." I realize not all 02:04:00
 25 of them are tobacco company documents. When I use 02:04:02

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1 that phrase, if you and I can just agree that we are 02:04:06
 2 talking about 3303 -- 02:04:08
 3 A. Right. 02:04:10
 4 Q. -- 3303A, which is Edward R. Murrow, 3305, and 02:04:16
 5 page 33 of your expert report, which is 3306. 02:04:20
 6 MR. O'FALLON: What happened to 3304? 02:04:24
 7 MR. PURVIS: 3304 isn't there yet. It's 02:04:26
 8 coming up. 02:04:28
 9 MR. O'FALLON: Okay. 02:04:28
 10 MR. PURVIS: Trying to keep you curious. 02:04:32
 11 BY MR. PURVIS:
 12 Q. Can we agree that we can call those the tobacco 02:04:34
 13 company documents just as a shorthand? 02:04:36
 14 A. Sure. For the sake of this deposition I will 02:04:38
 15 understand what you mean if you use that 02:04:40
 16 terminology. 02:04:40

17 Q. I appreciate it. 02:04:42

18 Are there any other documents, other than 02:04:44

19 the tobacco company documents we just identified, 02:04:46

20 that you have relied on in arriving at your opinions 02:04:50

21 in this case? 02:04:50

22 A. No. I would say that that set of documents 02:04:56

23 represents the set of documents I have relied on in 02:04:58

24 forming my opinions in this case. 02:05:02

25 Q. Have you consulted with anyone to assist you in 02:05:06

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1 arriving at your opinions in this case? And I am 02:05:08

2 excluding any conversations you had with your 02:05:10

3 attorneys. 02:05:12

4 A. No, I have not consulted with anyone. 02:05:14

5 Q. Have you told anyone about your involvement in this 02:05:16

6 litigation? 02:05:16

7 A. Yes. 02:05:20

8 Q. Who? 02:05:20

9 A. My wife, the dean of my school, some of my 02:05:30

10 colleagues, some people that I meet that say what 02:05:34

11 are you doing these days. 02:05:40

12 Q. Have you discussed the substance of your opinions 02:05:42

13 with any of those people you just described? 02:05:44

14 A. No. 02:05:48

15 Q. Can you tell me the professional journals that you 02:05:50

16 subscribe to? 02:05:52

17 A. I don't believe I subscribe to any at the moment 02:05:56

18 because we have this system at Harvard that we send 02:06:00

19 around the listing of the contents of all the 02:06:08

20	journals on a regular basis, and if you want any of	02:06:12
21	the articles you just check it off and the school	02:06:14
22	sends it to you.	02:06:16
23	Q. Do you regularly read any particular journals each	02:06:22
24	month, for example?	02:06:22
25	A. Well, there's, you know, a set that I kind of look	02:06:28

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1	at on this listing that we get to see if there's	02:06:32
2	anything within that group that I should take a look	02:06:34
3	at.	02:06:36
4	Q. Could you tell me the names of the journals in that	02:06:38
5	set that you have just mentioned?	02:06:40
6	A. Sure. Well, some of them would be the Journal of	02:06:44
7	Marketing, Journal of Marketing Research, to some	02:06:48
8	extent the Journal of Consumer Research. Those	02:06:56
9	would be sort of the major marketing ones. Then	02:07:00
10	Journal of Advertising Research. Those would be the	02:07:08
11	ones that I kind of make a point of looking at	02:07:12
12	regularly.	02:07:12
13	Q. I recall from your CV that you have published	02:07:16
14	articles in the Journal of Marketing, correct?	02:07:18
15	A. Correct.	02:07:20
16	Q. Have you published in the Journal of Marketing	02:07:22
17	Research?	02:07:22
18	A. No, I have not.	02:07:22
19	Q. Have you published in the Journal of Consumer	02:07:26
20	Research?	02:07:28
21	A. No, I have not.	02:07:28

22 Q. You are a reviewer -- on the editorial board for 02:07:34
23 Marketing Science; is that correct? 02:07:36
24 A. No. I am currently on the editorial board of just 02:07:38
25 the Journal of Marketing. 02:07:40

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1 Q. You were formerly a reviewer for -- 02:07:44
2 A. I was formerly on the editorial board and editor of 02:07:46
3 the field study section of Marketing Science, 02:07:50
4 correct. 02:07:50
5 Q. Did you review that journal during the time you held 02:07:52
6 those positions? 02:07:54
7 A. I'm sorry. Did I review it? 02:07:56
8 Q. Was that in your set? You didn't mention that in 02:07:58
9 your set. 02:08:00
10 A. Yeah; I probably should have included that in my set 02:08:02
11 now that it's mentioned, yeah. 02:08:04
12 Q. Are you a member of the American Marketing 02:08:08
13 Association? 02:08:08
14 A. I am not. 02:08:10
15 Q. Are you a member of the Association for Consumer 02:08:12
16 Research? 02:08:12
17 A. I'm not. 02:08:14
18 Q. Are you a member of the American Advertising 02:08:16
19 Association? 02:08:16
20 A. I'm not. 02:08:16
21 Q. Have you ever reviewed the complaint in this matter? 02:08:22
22 A. I'm not sure. Do you have a copy for me to look at 02:08:34
23 so that I could probably better say whether I did or 02:08:38
24 I didn't? 02:08:38

25 Q. I'm sorry, I don't. 02:08:42

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1 MR. MONICA: I have got one. 02:08:46

2 MR. PURVIS: That's all right. 02:08:50

3 BY MR. PURVIS:

4 Q. Does your CV correctly list all of your employment 02:09:00

5 history? 02:09:00

6 A. Well, subsequent to my getting -- 02:09:16

7 Q. Your doctorate? 02:09:18

8 A. My doctorate, right. 02:09:20

9 Q. As I read that CV, you've always been an academic; 02:09:24

10 is that correct? 02:09:28

11 A. Right; since receiving my doctoral, right, I have 02:09:30

12 always been an academic. 02:09:32

13 Q. Since receiving your doctorate have you ever been 02:09:32

14 employed full-time by a for-profit corporation? 02:09:36

15 A. No; I have not been employed full-time, no. 02:09:40

16 Q. But you have consulted with corporations? 02:09:42

17 A. Yes. 02:09:42

18 Q. Can you generally tell me the nature of the 02:09:44

19 consultancies that you have had with for-profit 02:09:48

20 corporations? 02:09:50

21 A. Sure. You know, usually it's around marketing. Two 02:09:58

22 kinds of outside work, I guess, other than 02:10:00

23 litigation matters: One is sort of 02:10:04

24 education/consulting, where you go in and work on 02:10:10

25 some problems with the company and then one of the 02:10:12

1 issues is that their people really -- the people who 02:10:16
2 are going to be there after you leave on a 02:10:18
3 consulting basis really need a new set of knowledge, 02:10:22
4 so we design a little educational program for them. 02:10:24
5 And then -- so that's one kind. And then the other 02:10:26
6 kind is really straight marketing consulting. 02:10:30
7 Q. I believe we have agreed that you have reviewed and 02:10:42
8 interpreted the tobacco company documents we have 02:10:46
9 described in supporting your opinions; is that 02:10:46
10 correct? 02:10:48
11 A. I have reviewed the documents in coming up with my 02:10:56
12 opinions. 02:10:58
13 Q. What training have you received in interpreting 02:11:02
14 documents? 02:11:04
15 A. In interpreting documents? Well, you know, I guess 02:11:14
16 that's -- as we talked about a little bit this 02:11:16
17 morning, the training that you receive in a doctoral 02:11:22
18 program is really about doing research, and so I 02:11:28
19 would say that is training in interpreting 02:11:32
20 documents. 02:11:32
21 And then I think all of my professional 02:11:36
22 life I've really been developing -- using and 02:11:46
23 developing an expertise in interpreting documents in 02:11:48
24 consulting assignments, in development of case 02:11:50
25 studies, research, and other litigation matters. 02:11:56

1 Q. When you used the word "documents" in that answer, 02:11:58
2 you weren't referring to published articles, were 02:12:02
3 you? 02:12:04
4 MR. O'FALLON: Objection. 02:12:06
5 A. When I used the word "documents" in what part of the 02:12:08
6 answer, now? 02:12:10
7 Q. Let me strike that. 02:12:12
8 A. Okay. 02:12:12
9 Q. The tobacco company documents that you have reviewed 02:12:18
10 are primarily internal memoranda or reports of 02:12:22
11 tobacco company defendants in this case, are they 02:12:24
12 not? 02:12:26
13 MR. O'FALLON: Objection as to 02:12:26
14 characterization. 02:12:28
15 A. I would say the majority of them are internal 02:12:30
16 tobacco company documents. 02:12:34
17 Q. They reflect internal communications within the 02:12:36
18 companies, don't they, for the most part? 02:12:38
19 MR. O'FALLON: Objection to the 02:12:40
20 characterization. 02:12:40
21 A. No, I don't think about it that way. I mean, there 02:12:46
22 are some memos from person A to person B certainly, 02:12:52
23 but I wouldn't say the majority of them were 02:12:56
24 internal memos. 02:12:58
25 Q. There were also various reports, were there not? 02:13:04

1 MR. O'FALLON: Objection, vague. 02:13:10
2 A. Among the set of documents that we are calling 02:13:14

3 the -- what are we calling it? -- tobacco industry 02:13:18

4 documents there are reports, there are market 02:13:20

5 research reports. 02:13:20

6 Q. Is it your understanding those were internal 02:13:22

7 documents kept within the company? 02:13:26

8 MR. O'FALLON: Objection, foundation. 02:13:28

9 A. My understanding is that, you know, the particular 02:13:34

10 things that I was just referring to, when I was 02:13:36

11 referring to them I had in mind that they were 02:13:38

12 documents which, you know, were for internal 02:13:44

13 planning purposes primarily. 02:13:46

14 I mean, to the extent that they were used 02:13:50

15 to -- perhaps disseminated elsewhere, they could be, 02:13:56

16 but I haven't really tracked that. 02:13:58

17 Q. Have you spoken with any person who has authored any 02:14:12

18 of the tobacco industry documents we have described? 02:14:14

19 A. I don't believe so, no. 02:14:18

20 Q. I believe when Mr. Falkenstein was questioning you 02:14:22

21 you referenced a memo by Dr. Wakeham of Philip 02:14:28

22 Morris. Do you recall that? 02:14:28

23 A. I recall that. 02:14:30

24 Q. For example, have you spoken with Dr. Wakeham? 02:14:32

25 A. No, I have not.

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1 MR. O'FALLON: Would you make him 02:14:34

2 available? I mean, let the record reflect that you 02:14:36

3 just don't go out and talk to people who are 02:14:38

4 representatives of the company. 02:14:42

5 BY MR. PURVIS:

6	Q.	Have you spoken with anyone at any of the	02:14:42
7		advertising agencies whose documents are reflected	02:14:48
8		in the tobacco industry documents?	02:14:52
9		MR. O'FALLON: Objection. Once again, are	02:14:54
10		you stating that the cigarette industry would have	02:14:56
11		allowed those people to talk to him about those	02:15:02
12		advertising campaigns?	02:15:04
13	BY MR. PURVIS:		
14	Q.	Go ahead.	02:15:04
15	A.	No, I have not attempted to contact anybody at the	02:15:06
16		advertising agencies of the tobacco companies.	02:15:10
17	Q.	Have you done anything to determine the job	02:15:14
18		description of any author of any of the tobacco	02:15:18
19		industry documents?	02:15:18
20	A.	The job description?	02:15:20
21	Q.	Right. Do you know what Dr. Wakeham's, for example,	02:15:24
22		position is or was with Philip Morris at any given	02:15:26
23		point in time?	02:15:28
24	A.	Well, I believe at the time of that document he was	02:15:30
25		head of research and development.	02:15:32

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1	Q.	And you determined that from the face of the	02:15:32
2		document, didn't you?	02:15:34
3	A.	No, I did -- I don't recall whether I knew it from	02:15:38
4		that. But, I mean, I recall asking one of the	02:15:42
5		attorneys what his position was.	02:15:44
6	Q.	Do you know independent of the face of the document	02:15:54
7		what the duties of Claude Teague at R.J. Reynolds	02:16:00

8	were?	02:16:02
9	A. As I sit here at the moment, I don't know.	02:16:04
10	MR. O'FALLON: Claude was a little unclear	02:16:12
11	about that himself.	02:16:22
12	A. So your opinions as reflected in 3306 are limited to	02:16:26
13	the application of your expertise to your	02:16:32
14	interpretation of the tobacco industry documents	02:16:34
15	that we've discussed?	02:16:36
16	MR. O'FALLON: Objection, misstates the	02:16:38
17	testimony.	02:16:38
18	A. No, I would not agree with that.	02:16:40
19	Q. What else is included that you think I have omitted	02:16:46
20	from that question?	02:16:46
21	A. Well, again, I think we have been kind of clear on	02:16:52
22	the documents that I have reviewed in the process of	02:16:54
23	formulating my opinion as expressed in 3306.	02:16:58
24	But, I mean, my general experience in	02:17:08
25	marketing and my analytical abilities in	02:17:16

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1	constructing arguments and so forth, I bring those	02:17:20
2	to bear in formulating this document.	02:17:22
3	But, I mean, as we have covered before, as	02:17:24
4	far as the document set, I would say, you know,	02:17:26
5	that's the document set.	02:17:28
6	Q. Other than the trip to Harvard University where you	02:17:32
7	looked up cigarettes and tobacco possibly on the	02:17:36
8	computer, have you done any other research in	02:17:42
9	support of your opinions in this case?	02:17:46
10	A. No; no, I have not done any research beyond what we	02:17:52

11 have already talked about. 02:17:52

12 Q. Exhibit 3305 indicates that you were given the 02:18:04

13 deposition of Adam Jaffe. Did you -- and earlier 02:18:10

14 you said you did not rely on that deposition in 02:18:14

15 arriving at any of the opinions you are expressing 02:18:16

16 in this case; is that right? 02:18:18

17 A. That's correct, that statement is correct. 02:18:20

18 Q. It also indicates at item number 2 that you were 02:18:24

19 given the expert report of Ronald Faber. Number 3, 02:18:28

20 you were given the expert report of Kip Viscusi. 02:18:32

21 Number 4, you were given the expert report of 02:18:34

22 Edward V. Morse, M-o-r-s-e. And number 5 -- let me 02:18:42

23 stop with 2, 3, and 4. 02:18:46

24 MR. O'FALLON: Let's just also have it 02:18:48

25 reflect that all of this was given to him after he 02:18:50

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1 had submitted his expert opinion. 02:18:52

2 MR. PURVIS: Okay, that's fine. 02:18:54

3 BY MR. PURVIS:

4 Q. Have you reviewed those three expert reports from 02:18:56

5 the defense experts? 02:18:58

6 A. I have. 02:19:00

7 Q. Do you know any of those three individuals? 02:19:04

8 A. No. I mean, just from seeing their CVs in the 02:19:12

9 expert reports. I don't know any of them 02:19:14

10 personally, no. 02:19:16

11 Q. Have you reviewed any literature that any of those 02:19:22

12 three individuals have published in their field of 02:19:26

13 expertise? 02:19:26
14 A. No; I don't believe so, no. 02:19:28
15 Q. Item number 5 -- I may have to quibble with Dan. 02:19:38
16 MR. PURVIS: Did Professor Berman suddenly 02:19:40
17 become a plaintiffs' expert? 02:19:42
18 MR. SIPKINS: They just wish that he 02:19:44
19 were. 02:19:46
20 MR. O'FALLON: No, I can say we don't. 02:19:48
21 No, that's just -- 02:19:50
22 MR. PURVIS: That's just a typo? 02:19:52
23 MR. O'FALLON: A typo, yes, unless we've 02:19:52
24 both got an expert named Hy Berman. 02:19:58
25

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1 BY MR. PURVIS:
2 Q. Professor Dolan, number 5 references a plaintiffs' 02:20:00
3 expert report of Hy Berman, and I will represent to 02:20:04
4 you that he is a defense expert in this case. 02:20:06
5 MR. O'FALLON: And we will so stipulate. 02:20:08
6 BY MR. PURVIS:
7 Q. Have you received his expert report? 02:20:10
8 A. Yes, I have. 02:20:10
9 Q. Have you reviewed it? 02:20:12
10 A. I have. 02:20:12
11 Q. Have you studied any of these four expert reports in 02:20:18
12 the sense of a thorough analysis or have you simply 02:20:22
13 reviewed them? 02:20:22
14 A. Well, it's a little hard to figure out what the 02:20:40
15 dividing line is between reviewed and studied. I 02:20:42

16 would say that I looked at Ronald Faber's probably 02:20:48
17 more closely than Viscusi, Morse, and Berman. But I 02:20:54
18 would not say that I studied Faber's in detail, no. 02:21:02
19 Q. Why did you pay more attention to Faber's expert 02:21:04
20 report? 02:21:06
21 A. It just seemed to be more directly related to the 02:21:10
22 subject matter that I am testifying about. I mean, 02:21:14
23 not that the others are, you know, over in another 02:21:16
24 territory completely, but if you said to me, okay, 02:21:20
25 which one of those four is sort of closest to the 02:21:24

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1 territory that I am opining about, I guess I would 02:21:28
2 have said Faber's. 02:21:30
3 Q. Did you see anything in the Faber expert report with 02:21:32
4 which you disagreed? 02:21:34
5 A. Yes. 02:21:34
6 Q. What? 02:21:36
7 A. His fundamental conclusion, which was that, you 02:21:38
8 know, the advertising activities of the firm did 02:21:44
9 nothing -- of the cigarette manufacturers did 02:21:46
10 nothing to influence the overall size of the market. 02:21:54
11 Q. Did you see anything in Mr. Viscusi's expert report 02:21:58
12 with which you disagreed? 02:22:00
13 A. That one I really didn't, kind of, read to the level 02:22:04
14 of, you know, sorting out I agree with this, 02:22:08
15 disagree with this kind of thing. 02:22:12
16 Q. How about with respect to the expert report of 02:22:14
17 Professor Morse, do you recall anything that you 02:22:18

18 disagreed with? 02:22:20
19 A. Let's see. Was that the one that had the statement 02:22:28
20 in there if advertising did what some people say it 02:22:32
21 does, everybody in the world would smoke, I think? 02:22:34
22 I think that's -- yeah, I remember having a reaction 02:22:40
23 to that particular statement. I think I have got it 02:22:44
24 right, that it's in there. 02:22:46
25 Q. And what was your reaction to that statement? 02:22:50

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1 A. That it's dumb. 02:22:54
2 Q. Is that because people decide to smoke for many 02:23:02
3 factors, one of which may be advertising? 02:23:04
4 A. Is that why I think he was incorrect in what he was 02:23:12
5 saying? 02:23:12
6 Q. Yes. As I understood the statement, he was saying 02:23:16
7 if advertising did what people contend it does, then 02:23:20
8 everybody would be smoking. Is that what you said? 02:23:22
9 A. Right, right. 02:23:24
10 Q. And you don't agree with that statement? 02:23:26
11 A. No, I do not agree with the reference that he is 02:23:32
12 making, that given the fact that not everybody in 02:23:36
13 the world smokes, advertising has no impact on 02:23:38
14 whether people adopt and continue smoking or not. 02:23:42
15 Q. How about the expert report of Hy Berman, do you 02:23:48
16 recall anything that you disagreed with there? 02:23:52
17 A. I don't recall anything that I specifically 02:23:56
18 disagreed with. 02:24:02
19 MR. O'FALLON: Just so the record is 02:24:04
20 complete, I mean, you are not suggesting that by the 02:24:06

21 fact he doesn't recall anything that he disagreed 02:24:10
22 with that he agreed with anything, correct? 02:24:10
23 MR. PURVIS: I wouldn't make that 02:24:12
24 inference at all. I understand he is reserving the 02:24:14
25 right to disagree with our side, just as we probably 02:24:16

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1 disagree with your side. 02:24:18
2 BY MR. PURVIS:
3 Q. Item 6 we talked about this morning, the 02:24:22
4 supplemental report of Mr. Much. 02:24:24
5 A. Right, right. That's the one that's a little bit 02:24:26
6 different; it's got the advertising and promotion 02:24:30
7 and marketing expenditures in it. 02:24:34
8 Q. Was that the only difference that you noted between 02:24:36
9 the original Much report and the supplemental Much 02:24:40
10 report? 02:24:40
11 A. No. I mean, I think they are really two, kind of, 02:24:46
12 different things altogether. I mean, this is 02:24:48
13 more -- I know it says "amended." It looks more 02:24:50
14 like, at least if I've got my documents right, it 02:24:56
15 looks more like an addendum to rather than an 02:24:58
16 amendment, is the way I looked at it. 02:25:00
17 Q. So you didn't see anything in the original body of 02:25:02
18 the report that was changed, you simply -- that's 02:25:06
19 (indicating) not the supplemental or amended Much 02:25:08
20 report. 02:25:10
21 A. Right, right. 02:25:10
22 MR. O'FALLON: Do you have the amended 02:25:12

23 Much report? 02:25:14
24 MR. PURVIS: No. This is my last question 02:25:16
25 on it. 02:25:16

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1 MR. O'FALLON: To the extent you can 02:25:18
2 recall it. 02:25:20
3 A. Yeah, we should be clear. 3302 is an expert 02:25:24
4 analysis of profitability. All right? And this one 02:25:28
5 we are talking about is an amended expert analysis 02:25:32
6 of advertising, R&D, and youth prevention expenses. 02:25:36
7 And so I think they are -- I think this thing, 02:25:40
8 6 here, was not an amendment of -- 02:25:42
9 Q. 3302?
10 A. -- 3302, is my understanding. 02:25:44
11 Q. Okay. Items 7, 8, 9, 10, and 11 on 3305 are 02:25:52
12 additional Bates numbers for tobacco company 02:25:56
13 documents. And we have established you received 02:25:58
14 those, but you received them after you had already 02:26:00
15 submitted your expert report; is that correct? 02:26:04
16 A. I am not sure whether these were another copy of 02:26:12
17 something I already had or this was new stuff. I am 02:26:16
18 not sure what that is, to tell you the truth. 02:26:18
19 Q. Did you make a request for additional tobacco 02:26:22
20 company documents after you submitted your expert 02:26:24
21 report in this matter? 02:26:26
22 A. Let's see. Not that I can recall. 02:26:40
23 Q. They just showed up in your mailbox one day? 02:26:44
24 A. Well, you know, I mean, I had some sort of standing 02:26:50
25 requests for information of type X, Y, and Z. I 02:26:56

1 don't honestly recall the specific, you know, things 02:27:00
2 that are on this August 6th letter. 02:27:04
3 MR. O'FALLON: Just so the record is 02:27:08
4 clear, the production is still ongoing, there is 02:27:14
5 still documents trickling in. 02:27:16
6 BY MR. PURVIS:
7 Q. It's my understanding that many of the documents 02:27:16
8 referred to by Bates number in 3302 are cigarette 02:27:20
9 advertisements. Is that correct? 02:27:22
10 A. I got several boxes full of cigarette 02:27:30
11 advertisements, so I would suspect that this list 02:27:34
12 includes a listing of -- this includes a listing of 02:27:40
13 those boxes and stuff. 02:27:42
14 Q. Have you reviewed all of the cigarette ads in those 02:27:44
15 boxes? 02:27:46
16 A. Well, "review" might be using -- a little bit 02:27:52
17 loosely to say. I mean, I basically flipped 02:27:56
18 through. I think "flipped through" would be a good 02:28:00
19 characterization of what I did for some of the ones 02:28:04
20 which were very early on. But, yeah, I mean, I have 02:28:06
21 gone through the three boxes to see what was there. 02:28:10
22 Q. Those three boxes of cigarette company ads were what 02:28:16
23 the companies actually tried to communicate to the 02:28:20
24 public, correct? 02:28:22
25 A. Well, those -- I mean, they were advertisements that 02:28:30

1 were placed by the company to communicate certain 02:28:34
2 things to the public, right. 02:28:36
3 Q. Other documents that you have referred to this 02:28:38
4 morning were marketing strategy documents, correct? 02:28:42
5 A. In terms of things that I would like to see? 02:28:48
6 Q. That you have actually seen. 02:28:50
7 A. Right, yeah; marketing plans, marketing strategy 02:28:52
8 formulation documents, right. 02:28:54
9 Q. Is it correct to state that the advertisements 02:28:58
10 themselves represent part of the execution of a 02:29:04
11 marketing strategy plan? 02:29:06
12 A. I mean, it's usually the case that the tactics, the 02:29:14
13 execution, you know, which I would include the ads 02:29:18
14 as an executional element, I mean, they typically, 02:29:22
15 you know, flow out of a strategy; not always, but 02:29:26
16 that's the way, yeah, that's the way it is supposed 02:29:32
17 to go. 02:29:32
18 Q. In arriving at your conclusions in this case have 02:29:34
19 you placed equal weight on the internal marketing 02:29:42
20 strategies of the companies and the actual 02:29:46
21 executional elements, in this case being the 02:29:48
22 cigarette ads? 02:29:50
23 MR. O'FALLON: Objection, form. 02:29:52
24 A. I mean, I don't think about it that way, in terms 02:29:56
25 of, you know, equal weight. I mean, I try to look 02:29:58

1 at everything together. 02:30:02

2 Q. Which do you believe is more significant, what a 02:30:06
3 company says it intends to do in terms of a 02:30:08
4 marketing plan or what the company actually ends up 02:30:12
5 doing? 02:30:12
6 MR. O'FALLON: Objection, form. 02:30:14
7 A. It depends on what you are trying to figure out. 02:30:20
8 Q. In your work on this case, which did you find more 02:30:30
9 important? 02:30:32
10 MR. O'FALLON: Objection, form. 02:30:36
11 A. Well, I mean, both are important to understand what 02:30:42
12 the objectives of the firm were and the mechanisms 02:30:48
13 or the strategy that they were trying to implement 02:30:50
14 and the specific means via which they executed 02:30:54
15 them. I mean, I think both were important to me. 02:31:00
16 Q. Are cigarettes a mature product category? 02:31:02
17 A. I don't believe so, no. 02:31:04
18 Q. Why not? 02:31:06
19 A. Basically because cigarettes have some different 02:31:20
20 characteristics than most markets. I mean, I would 02:31:22
21 say cigarettes are not a mature product category 02:31:26
22 because at any point in time -- I mean, it's 02:31:32
23 documented in a number of places about the 02:31:34
24 percentage of the people who are saying, you know, I 02:31:36
25 wish I could quit and the number who are actually 02:31:38

1 trying to quit and leaving the market and coming 02:31:42
2 back into the market. 02:31:42
3 So it's not a situation, you know, where 02:31:44

4 you have a market where there is not much going on. 02:31:50

5 I mean, there is in the cigarette market kind of a 02:31:54

6 lot going on with people, you know, having the 02:32:00

7 desire to get themselves out of the market, leaving 02:32:04

8 the market, coming back into the market. Then you 02:32:06

9 have got people who haven't been smokers coming into 02:32:08

10 the market. So you have a lot of dynamism to the 02:32:10

11 marketplace. 02:32:12

12 I don't -- I mean, to call it a mature 02:32:16

13 market with, you know, the implication that it's 02:32:18

14 sort of staid and not much happening is just not 02:32:22

15 what I see going on in the market at all. 02:32:24

16 Q. Have you seen in the professional literature in the 02:32:28

17 field of marketing cigarettes referred to as a 02:32:30

18 mature product category? 02:32:32

19 A. I've seen cigarettes referred to as a mature product 02:32:36

20 category. Whether that was -- you know, there's 02:32:40

21 anyplace in the academic literature which makes that 02:32:44

22 statement or not, I'm not sure. 02:32:46

23 Q. But you disagree with that characterization? 02:32:48

24 A. If that characterization were made, I would 02:32:50

25 absolutely disagree with it. 02:32:52

1 Q. I recognize that you don't use textbooks at the 02:32:56

2 Harvard Business School, but -- 02:32:58

3 A. Well, we use some, but not extensively. 02:33:02

4 Q. Do you use any marketing textbooks? 02:33:04

5 A. Well, not in the -- I can't speak -- well, not in 02:33:10

6 the courses that I am currently teaching, we do not 02:33:14

7 use any textbooks. Some of my colleagues who are 02:33:16

8 teaching elective courses in the second year of the 02:33:20

9 MBA program may use textbooks. I am not -- I don't 02:33:24

10 know whether they do or not. 02:33:26

11 Q. Have you ever used a marketing textbook in any of 02:33:28

12 your teachings? 02:33:30

13 A. Yes. 02:33:30

14 Q. Which one? 02:33:32

15 A. Let's see. When I was at the University of 02:33:34

16 Chicago -- we are going back. Well, we mentioned 02:33:42

17 this morning Aaker and Meyers Advertising 02:33:44

18 Management. Let's see. There was a book by Abell 02:33:52

19 and Hammond -- I think it was Strategic Marketing 02:33:54

20 Management -- that I used. Those would be the ones 02:34:04

21 that I can remember, going back. 02:34:06

22 Q. Ever use one by Peter and Olson? 02:34:08

23 A. I have not, no. 02:34:10

24 Q. Ever use one by Wells and Moriarty (phonetic)? 02:34:16

25 A. I have not, no. 02:34:18

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1 Q. Do you recognize the authors that I have just listed 02:34:20

2 as authors of marketing textbooks? 02:34:22

3 A. Yeah, I think I -- I certainly recognize the names 02:34:24

4 of the first you mentioned. And Wells and Moriarty, 02:34:30

5 I believe I have heard of that one. 02:34:30

6 Q. How many academics would you estimate are currently 02:34:44

7 studying how advertising works? 02:34:50

8 MR. O'FALLON: Objection, foundation. 02:34:52

9 A. I really don't know. I don't have a basis for 02:35:00
 10 answering that. 02:35:00
 11 Q. It's several thousand, wouldn't you agree? 02:35:06
 12 A. No. 02:35:06
 13 Q. Does anyone know exactly how advertising works? 02:35:14
 14 A. Does anyone know exactly how advertising works? You 02:35:18
 15 know, I --
 16 MR. O'FALLON: Objection, vague. 02:35:20
 17 A. We know some things about how advertising works. 02:35:30
 18 Q. But you don't know it all, do you? 02:35:36
 19 MR. O'FALLON: Objection, argumentative. 02:35:40
 20 A. When you know something, it's not possible to know 02:35:44
 21 if you know all, I guess. 02:35:46
 22 Q. Wouldn't you agree that no one fully understands how 02:35:50
 23 advertising works? 02:35:52
 24 MR. O'FALLON: Objection. 02:35:54
 25 A. Well, I -- fully understands how advertising works? 02:36:02

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1 I mean, I do think we in the marketing field and 02:36:08
 2 within the practitioner community have a pretty good 02:36:12
 3 understanding of how advertising works. 02:36:16
 4 I think it is the case that, you know, 02:36:20
 5 some advertising campaigns are more successful than 02:36:24
 6 others and some are less successful than the company 02:36:28
 7 intended them to be, which suggests that maybe 02:36:30
 8 somebody hadn't quite figured out what the 02:36:32
 9 advertising impact was going to be. 02:36:36
 10 Q. You said some advertising campaigns are less 02:36:40
 11 successful. Isn't it a fact that some advertising 02:36:42

12	campaigns are out-and-out failures?	02:36:44
13	MR. O'FALLON: Objection, characterization,	02:36:48
14	overbroad.	02:36:50
15	A. I mean, I'd prefer to stick with what I said, that	02:37:00
16	some advertising campaigns don't deliver what it was	02:37:04
17	the company had in mind for them to deliver.	02:37:08
18	So whether you call that less than	02:37:10
19	successful or a failure I guess would, you know,	02:37:12
20	differ by the company.	02:37:14
21	Q. Do any of the case studies you use at Harvard deal	02:37:18
22	with advertising failures?	02:37:20
23	A. I don't think of them that way, that we'd say, gee,	02:37:34
24	we have got to have a case on an advertising	02:37:36
25	failure, let's bring that into the classroom.	02:37:42

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1	Q. Do you fully understand how advertising works?	02:37:44
2	A. I have an understanding of how advertising works.	02:37:58
3	Is there more to understanding how advertising works	02:38:04
4	than I understand at this moment in time? I mean, I	02:38:08
5	think probably it is the case that more research	02:38:12
6	into the effects of advertising is probably	02:38:16
7	warranted.	02:38:18
8	Q. You mentioned the Journal of Consumer Research a few	02:38:26
9	minutes ago, correct?	02:38:26
10	A. Right.	02:38:26
11	Q. Do you know what types of disciplines are	02:38:28
12	represented by membership of the Association for	02:38:32
13	Consumer Research, which you recognize as the parent	02:38:34

14 organization that publishes JCR? 02:38:38
15 MR. O'FALLON: Objection, compound. 02:38:40
16 BY MR. PURVIS:
17 Q. Let me start that over; it's a bad question. You 02:38:44
18 recognize that the Association for Consumer Research 02:38:46
19 publishes the Journal for Consumer Research? 02:38:48
20 A. Yeah. Journal of Consumer Research, right, isn't 02:38:52
21 it? I think. JCR, right. 02:38:56
22 Q. We will call it JCR. Do you know how many members 02:39:00
23 there are in the Association for Consumer Research? 02:39:04
24 A. I don't. 02:39:04
25 Q. Do you know the disciplines represented by the 02:39:06

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1 membership of the Association for Consumer Research? 02:39:10
2 A. I think I have a sense of generally the breadth of 02:39:14
3 that. 02:39:16
4 Q. Could you describe some of the various members, 02:39:18
5 disciplines that are represented in the membership? 02:39:20
6 A. Sure. Psychology, sociology, some economists. 02:39:28
7 Q. Anthropologists? 02:39:30
8 A. Could be; that wouldn't surprise me. 02:39:36
9 Q. Communications experts? 02:39:38
10 A. It wouldn't surprise me at all to have communication 02:39:44
11 experts, right. 02:39:46
12 Q. And the vast majority of the membership is made up 02:39:48
13 of members of the marketing discipline, aren't 02:39:52
14 they? 02:39:54
15 MR. O'FALLON: Objection, foundation. 02:39:56
16 A. Yeah, I don't know that to be the case. I mean, 02:40:02

17	certainly a number of my colleagues in the marketing	02:40:04
18	area at school are members of the Association for	02:40:08
19	Consumer Research. But whether the majority of the	02:40:10
20	members would call themselves marketers, I don't	02:40:14
21	know.	02:40:14
22	Q. Have you ever drafted a marketing strategy plan?	02:40:18
23	A. Yes.	02:40:20
24	Q. Could you tell me about that?	02:40:22
25	A. Well, sure. Most recently I was working with a	02:40:42

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1	small company and really developed the whole	02:40:46
2	marketing plan for a new product that they had in	02:40:52
3	concert with the CEO.	02:40:54
4	Q. In that consultancy did you communicate with other	02:41:00
5	members of the company?	02:41:02
6	A. Yes.	02:41:10
7	Q. Were you consulting at the company's place of	02:41:14
8	operations?	02:41:16
9	A. Yes.	02:41:16
10	Q. What means of communication did you use to	02:41:20
11	communicate with other members of that corporation?	02:41:26
12	MR. O'FALLON: Objection.	02:41:28
13	A. Talked to them.	02:41:30
14	Q. Did you write any memos to them?	02:41:32
15	A. Yes.	02:41:32
16	Q. Did they write any memos to you?	02:41:36
17	A. Yes.	02:41:36
18	Q. Did you accept that as a normal form of internal	02:41:42

19 communication for a corporation? 02:41:44
20 A. The writing of memos? 02:41:46
21 Q. (Nodding.) 02:41:48
22 A. Yeah, I would accept that the writing of memos is a 02:41:54
23 form of communication within an organization. 02:41:58
24 Q. Did you freely express your ideas and opinions in 02:42:02
25 the memos that you created and distributed in that 02:42:04

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1 corporation? 02:42:06
2 A. I did. 02:42:08
3 Q. Did you sense that those who sent you memos were 02:42:10
4 also freely expressing their opinions in the 02:42:14
5 correspondence to you? 02:42:18
6 A. I had that sense, yes. 02:42:20
7 Q. And do you find that to be a normal occurrence for 02:42:22
8 internal communications inside of a corporation? 02:42:24
9 MR. O'FALLON: Objection, foundation. 02:42:30
10 A. That's pretty broad. You know, sometimes people 02:42:36
11 have particular points of views that they are, sort 02:42:44
12 of, fostering in their communications. 02:42:46
13 Q. And sometimes those points of views are accepted by 02:42:50
14 management, aren't they? 02:42:52
15 A. Sometimes those point of views would be accepted by 02:42:56
16 management, I believe that's correct. 02:42:58
17 Q. And sometimes those points of view would be rejected 02:43:00
18 by management; wouldn't that be correct? 02:43:02
19 A. That happens on occasion, yes. 02:43:06
20 Q. In your professional experience, doesn't the 02:43:08
21 ultimate decision-making power rest with management? 02:43:12

22 A. As opposed to whom? 02:43:16
23 Q. Employees. 02:43:18
24 MR. O'FALLON: Management is employees. 02:43:22
25 MR. PURVIS: Rank and file employees. 02:43:30

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1 MR. O'FALLON: I will just object on 02:43:32
2 foundation. 02:43:32
3 A. I'm sorry, I sort of lost the question. Could you 02:43:36
4 give it back to me? 02:43:38
5 (Question on page 199, line 20
6 read back by the court reporter.) 02:43:52
7 A. Well, I guess that's how a lot of times you define 02:44:00
8 management. But, yeah, I mean, there's -- of 02:44:06
9 course, the decision-making authorities. And where 02:44:08
10 it sits in a particular organization varies from 02:44:12
11 one, you know, organization to the next. 02:44:14
12 But, I mean, generally the upper level 02:44:18
13 people basically would be the ones with profit and 02:44:24
14 loss responsibility and they are going to be 02:44:26
15 responsible for the organizational unit that they 02:44:28
16 are running, so they tend to exercise some rights 02:44:36
17 over the decisions which are implemented. 02:44:40
18 Q. That's a responsibility that is imposed on the 02:44:44
19 management of the corporation, usually by its 02:44:46
20 bylaws? 02:44:48
21 MR. O'FALLON: Objection, calls for 02:44:52
22 speculation, legal conclusion. 02:44:54
23 A. I don't know. That's not the way I think about it, 02:44:58

24 that -- you know, so much bylaws. But, you know, if 02:45:00
25 you're the division president of a unit with profit 02:45:06

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1 and loss responsibility and that's how you are going 02:45:08
2 to be evaluated, you know, well, that means you have 02:45:10
3 a certain set of responsibilities in the way you are 02:45:14
4 going to be evaluated and so forth. 02:45:16

5 Q. I recognize that there are many different ways that 02:45:20
6 corporations can be organized in terms of their 02:45:22
7 management, but could you describe for me how a 02:45:24
8 corporation typically would be organized from the 02:45:26
9 top to the bottom? 02:45:30

10 MR. O'FALLON: Objection, foundation. 02:45:32

11 A. Yeah, I don't know -- I don't study organizational 02:45:42
12 structure the way that some of my colleagues do, so 02:45:44
13 I wouldn't be able to say, you know, now, the 02:45:46
14 typical organizational form is a matrix form or a 02:45:50
15 traditional hierarchical form. 02:45:54

16 Q. But you recognize that the decision-making authority 02:45:56
17 for a corporation generally lies in the hands of its 02:46:00
18 upper level management? 02:46:06

19 MR. O'FALLON: Objection, foundation. 02:46:12

20 A. Yeah, I mean, generally -- I have a little trouble 02:46:14
21 with the terminology of "upper level management" and 02:46:18
22 so forth. But, I mean, generally I would agree that 02:46:22
23 most companies have a structure that somebody sort 02:46:28
24 of has responsibility for the business unit. 02:46:32

25 You know, some organizations delegate a 02:46:34

1 lot of authority to the sales force and let their 02:46:40
2 sales force kind of implement and come up with their 02:46:44
3 own decisions about pricing and products and that 02:46:46
4 sort of thing. Others are very centralized. So I 02:46:52
5 think it varies a lot. 02:46:54

6 Q. Do you believe that there should be a free flow of 02:46:56
7 ideas back and forth among employees of a 02:47:00
8 corporation? 02:47:00

9 A. Well, not necessarily, because, you know, there are 02:47:20
10 benefits to specialization and sometimes the free 02:47:24
11 flow of information can sort of get in the way of 02:47:28
12 getting work done. 02:47:30

13 I mean, I think if you look at some of 02:47:32
14 these companies and you hear how many e-mails are 02:47:36
15 being sent inside a company in the name of free flow 02:47:40
16 of information, it's not clear to me that that's a 02:47:42
17 good way for time to be spent. 02:47:46

18 Q. But you recognize that it is natural for the 02:47:50
19 employees of a corporation to communicate with each 02:47:52
20 other about the business of the corporation? 02:47:54

21 A. Yeah, I would agree with that, that, you know, it's 02:48:02
22 generally a good idea for the employees within a 02:48:08
23 business unit to understand what different parts of 02:48:10
24 it are doing. 02:48:12

25 And a lot of the team structures that you 02:48:14

1 hear about these days are kind of done to get that 02:48:18
2 flow of communication, right. 02:48:20
3 MR. PURVIS: Why don't we take a break. 02:48:22
4 (Break taken.) 02:48:22
5 MR. PURVIS: Back on the record. 03:00:56
6 BY MR. PURVIS:
7 Q. Earlier I asked you to describe the methodology you 03:01:02
8 followed in creating Defendants' 3606. Do you 03:01:08
9 recall that? 03:01:12
10 A. 3306. 03:01:14
11 Q. 3306, I'm sorry.
12 I apologize, but we got distracted and 03:01:16
13 onto some other matters. Can we return to that 03:01:18
14 subject and can you continue to describe for me how 03:01:22
15 you came to prepare 3306? 03:01:24
16 A. Okay. Let's see. I guess, as I recall, we are 03:01:28
17 about up to the time where I came back to 03:01:30
18 Minneapolis and basically, sort of, had an outline 03:01:36
19 of how I saw the expert statement shaping up and I 03:01:40
20 went through it with some of the Robins Kaplan 03:01:46
21 lawyers. 03:01:46
22 MR. O'FALLON: I just caution you not to 03:01:48
23 get into any discussions or reveal any of those 03:01:52
24 communications. 03:01:54
25 THE WITNESS: Okay. 03:01:54

1 BY MR. PURVIS:
2 Q. For the record, I am not asking you those, just the 03:01:56

3 process. 03:01:58

4 A. Right. So it was basically here is the outline of 03:02:04

5 how I would see it shaping up. Then I went off and 03:02:06

6 wrote this, sent it out here, got a couple of 03:02:14

7 comments back, and here it is. 03:02:20

8 Q. Okay. You started your answer by saying "I came 03:02:22

9 back" out here. Meaning to Minneapolis? 03:02:24

10 A. Correct. 03:02:24

11 Q. What month was that? 03:02:26

12 A. April. 03:02:28

13 Q. April. Between the first meeting you had in late 03:02:30

14 January here in Minneapolis and the April meeting, 03:02:34

15 were there any other meetings with the lawyers? 03:02:38

16 A. I don't believe there were any other in-person 03:02:42

17 meetings, no. 03:02:44

18 Q. You indicated that there had been a total of three 03:02:46

19 meetings with lawyers. When was the third meeting? 03:02:48

20 A. Over this past weekend. 03:02:50

21 Q. And those three meetings constitute the sum of 03:02:56

22 face-to-face conversations you have had with the 03:02:58

23 lawyers about this case? 03:02:58

24 A. I believe that's correct, yes. 03:03:00

25 Q. Would I be correct in assuming you had some 03:03:06

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1 telephone conversations with the lawyers over the 03:03:10

2 months January through July? 03:03:12

3 A. You would be correct in that assumption, yes. 03:03:16

4 Q. Approximately how frequently would you communicate 03:03:18

5 with the lawyers by telephone? 03:03:20

6 A. I'd say something like every couple of weeks 03:03:30

7 wouldn't be far from what it was. 03:03:34

8 Q. When you came to Minneapolis to meet with the 03:03:36

9 lawyers in April of 1997, did you have an outline of 03:03:42

10 your proposed expert report prepared at that time? 03:03:46

11 A. Yes. 03:03:48

12 Q. Was it a typewritten document or handwritten? 03:03:52

13 A. It was handwritten. 03:03:54

14 Q. As I understand your testimony, as a result of 03:04:00

15 conferring with the lawyers you returned to Boston 03:04:04

16 and prepared a typewritten draft of what is now 03:04:06

17 3306? 03:04:08

18 A. That's correct. 03:04:08

19 Q. And you received a few comments from the lawyers and 03:04:16

20 it was filed in May? 03:04:16

21 MR. O'FALLON: I think it's dated. 03:04:24

22 MS. SUTTON: June 2nd.

23 MR. PURVIS: June 2nd, okay. 03:04:26

24 BY MR. PURVIS:

25 Q. Did you type this expert report yourself? 03:04:28

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1 A. No. 03:04:30

2 Q. Who typed it? 03:04:30

3 A. My secretary. 03:04:32

4 Q. When I asked you to describe the methodology, I 03:04:44

5 intended that you would explain to me the thought 03:04:48

6 processes and research that you went through to 03:04:52

7 arrive at this. 03:04:54

8	A.	Oh, okay.	03:04:54
9	Q.	Could you explain that to me?	03:04:56
10	A.	Yeah, I think so. I mean, for me the first stage is	03:05:02
11		to read documents and kind of drift along reading	03:05:12
12		documents so you can get kind of a lay of the land	03:05:18
13		and then start to see what the issues are that, you	03:05:24
14		know, you should be addressing.	03:05:28
15		You know, after looking at the documents I	03:05:32
16		kind of developed an idea that I should be	03:05:36
17		addressing the totality of the marketing activities	03:05:40
18		rather than just the advertising, which some people	03:05:42
19		had kind of focused in on before.	03:05:46
20		And then I sort of had these little	03:05:54
21		categories that I was collecting information in, you	03:05:58
22		know, those handwritten notes that you have got over	03:06:00
23		there and I have got over here; sort of making those	03:06:04
24		notes and developing little categories.	03:06:06
25		And then kind of saying, all right, what	03:06:08

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1		is it that we want to say here. And then coming	03:06:16
2		back out and saying, look, this is what I think the	03:06:18
3		marketing viewpoint on this is and here's how I'd	03:06:20
4		say it.	03:06:20
5	Q.	I am handing you what has been marked as Defendants'	03:06:22
6		Exhibit 3304 and ask if you can identify that.	03:06:26
7	A.	Sure. These are my handwritten notes from the	03:06:42
8		process of reading documents in this case.	03:06:46
9	Q.	And the documents you are referring to are what we	03:06:48

10 have called the tobacco industry documents? 03:06:50

11 A. That's correct. 03:06:50

12 Q. And this is your handwriting reflected on 3304? 03:06:56

13 A. It is. 03:06:56

14 Q. Over what period of time did you create the notes 03:07:00

15 that are 3304? 03:07:02

16 A. Oh, I would say from January until May. 03:07:08

17 Q. Approximately how much time a week would you spend 03:07:12

18 working on review of tobacco industry documents? 03:07:14

19 A. It jumped up and down all over the place depending 03:07:20

20 upon my other commitments. 03:07:22

21 Q. Although your notes are certainly extensive -- 03:07:30

22 A. Right. 03:07:32

23 Q. -- I don't see reference to every document that has 03:07:36

24 been identified in the tobacco industry documents. 03:07:40

25 Is that correct? 03:07:42

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1 A. That would be correct. 03:07:42

2 Q. So you only took notes on some of the tobacco 03:07:46

3 industry documents and not all of them? 03:07:48

4 A. That would be correct. 03:07:52

5 Q. What criteria did you use to determine which 03:07:56

6 documents you would take notes on and which you 03:07:58

7 would not? 03:08:00

8 A. You know, at the early stage, I mean, it was 03:08:08

9 basically, oh, is this interesting or possibly 03:08:16

10 important to me later on. So, I mean, this is -- 03:08:18

11 from the early stages it's notes on just, kind of, 03:08:26

12 things I think, gee, I might -- this is something I 03:08:28

13 might want to have in my head for a while. And, 03:08:32
14 really, taking notes is a good way for me to 03:08:36
15 remember something. So that was really the 03:08:40
16 criteria. 03:08:42
17 And then as I got further along, you know, 03:08:46
18 I knew that in my expert report I was going to be 03:08:52
19 saying something about distribution, so I sort of 03:08:54
20 had my antenna up as I was going through the 03:08:58
21 documents and saying, gee, I really want to be able 03:09:00
22 to say how many outlets cigarettes were sold in. So 03:09:04
23 after a while I sort of had the little categories 03:09:08
24 and was on the lookout for specific information. 03:09:12
25 So I would say my criteria sort of changed 03:09:16

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1 over time. I mean, really in the beginning it was 03:09:20
2 just, well, you know, maybe some of this stuff I 03:09:24
3 would want to know later on. And then I kind of 03:09:28
4 look back at it today and say, gee, I wonder why I 03:09:32
5 wrote that down, it didn't seem so memorable. And 03:09:34
6 then, as I say, later on I kind of was more specific 03:09:38
7 and kind of knew what I was looking for. 03:09:40
8 Q. Did you create the various topics that are reflected 03:09:44
9 at the top of most of the pages of 3304? 03:09:52
10 A. Did I create them? 03:09:54
11 Q. Yes. 03:09:54
12 A. Yes. 03:09:54
13 Q. For example, on the first page the word 03:09:56
14 "distribution" is there. 03:09:56

15	A.	Right.	03:09:58
16	Q.	And on the second page also appears the word	03:10:00
17		"distribution."	03:10:00
18	A.	Right.	03:10:02
19	Q.	Is that the categorization that you created, in	03:10:04
20		other words, these documents deal with distribution?	03:10:08
21	A.	Right, right. This would be a part of the	03:10:10
22		categorization which I created, right.	03:10:14
23	Q.	Today all these pages are stapled together. Is this	03:10:18
24		the format the original has always been in, in other	03:10:22
25		words, the sequence?	03:10:24

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1	A.	Oh, no.	
2	Q.	What I am getting at is: Did you have a file folder	03:10:26
3		for distribution where you would keep the pages for	03:10:30
4		distribution notes and a file folder for youth	03:10:34
5		marketing where you would keep the notes for youth	03:10:36
6		marketing?	03:10:36
7	A.	Generally that was the idea, but it wasn't so much	03:10:40
8		file folders as piles.	03:10:42
9	Q.	Okay. Can you give me any more information on the	03:11:06
10		methodology you used to prepare the report which is	03:11:14
11		3606 -- 3306?	03:11:16
12		MR. O'FALLON: Objection, vague.	03:11:20
13	A.	Yeah, I'm not -- can you just clarify, amplify a	03:11:32
14		little bit for me what you would like me to talk	03:11:34
15		about?	03:11:34
16	Q.	As I understand your testimony, you received	03:11:38
17		documents from the attorneys, the tobacco industry	03:11:40

18	documents, over a period of weeks, if not months; is	03:11:42
19	that correct?	03:11:44
20	A. Right.	03:11:44
21	Q. You began reviewing those documents and making notes	03:11:46
22	about the things that you thought were interesting	03:11:48
23	in the documents you reviewed, correct?	03:11:50
24	A. Um-hmm.	03:11:52
25	Q. And those notes are reflected in 3304?	03:11:54

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1	A. Right. And some of the notes in 3304 are from a	03:11:58
2	later stage when I really had more of a vision of	03:12:00
3	exactly what I was going to want to be talking	03:12:04
4	about, so it was a little more directed.	03:12:06
5	Q. And we agreed you have been provided several	03:12:08
6	thousand tobacco industry documents, correct, or	03:12:12
7	approximately 4,200 by my count?	03:12:18
8	A. I accepted your count. I haven't done the count	03:12:20
9	actually.	
10	Q. But you didn't take notes on every document, only	03:12:24
11	the ones you found interesting?	03:12:26
12	A. No. I mean, I did take some notes which aren't in	03:12:30
13	3304 because I wound up throwing them away. But I	03:12:36
14	also did not for every document that I looked at	03:12:38
15	make a note.	03:12:40
16	Q. And other than the trip to the Harvard library to	03:12:48
17	look on the computer index, you did no other	03:12:50
18	research to arrive at the opinions expressed in	03:12:56
19	3306?	03:12:56

20 MR. O'FALLON: Objection, asked and 03:12:58
21 answered. 03:12:58
22 A. You know, I'll stick with my previous answer on 03:13:02
23 that, right. 03:13:02
24 Q. Then would I be correct in saying that when you 03:13:06
25 completed this review process and -- as you were 03:13:08

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1 reviewing you were applying your expertise and that 03:13:14
2 application of the expertise to the tobacco industry 03:13:16
3 documents is what has resulted in your expert 03:13:18
4 report, which is 3306? 03:13:22
5 MR. O'FALLON: Objection, compound. 03:13:24
6 A. I would say that -- maybe I am missing something; I 03:13:30
7 thought we had already said this. But, yeah, I 03:13:34
8 mean, what we are calling the tobacco industry 03:13:36
9 documents are the documents that I relied upon in 03:13:40
10 formulating my opinion and writing my expert report, 03:13:46
11 and I bring to bear on those documents my expertise 03:13:50
12 in formulating the report. 03:13:52
13 Q. And there are no other documents, other than the 03:13:56
14 tobacco industry documents we have described, that 03:13:58
15 you relied on in arriving at this report? 03:14:02
16 A. I would say that that's correct. 03:14:04
17 Q. Have you ever taught research methodology? 03:14:08
18 A. Yes. 03:14:10
19 Q. Do you recall the title of the course? 03:14:12
20 A. I think it was research design, I think. 03:14:18
21 Q. The methodology you used in arriving at the 03:14:24
22 conclusions expressed in 3306, is that methodology 03:14:28

23 recognized formally in the discipline of research? 03:14:36
24 MR. O'FALLON: Objection, foundation. 03:14:38
25 A. Gee, I don't -- I mean, I don't recall, sort of, 03:14:54

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1 discussing this kind of research in a research 03:14:58
2 design course. 03:15:00
3 Q. Are there labels for certain research approaches, 03:15:10
4 for example, I want you to use the XYZ approach to 03:15:14
5 researching this topic? 03:15:16
6 MR. O'FALLON: Objection, foundation. 03:15:20
7 A. Maybe I could give you a couple of examples. There 03:15:22
8 is, for example, an experimental approach. I want 03:15:26
9 to know, you know, does a Big Bertha driver really 03:15:34
10 hit a ball further than a Burner Bubble driver. 03:15:38
11 Well, how would I figure that out? I could go ask 03:15:42
12 people, so I could -- there is a survey 03:15:44
13 methodology. I could go conduct an experiment; I 03:15:48
14 could send you out there to hit 100 balls with one 03:15:50
15 and have you come back the next day and hit 100 03:15:54
16 balls with another and do the experiment. 03:15:56
17 So there are, you know, different types of 03:16:02
18 approaches: experimentation, survey, primary data, 03:16:04
19 secondary data, those kinds of things. 03:16:08
20 Q. How would you label the research approach you used 03:16:12
21 for creating your opinions in 3306? 03:16:18
22 MR. O'FALLON: Objection, foundation. 03:16:20
23 A. I mean, the way that I would characterize my 03:16:22
24 approach to this assignment was to rely on internal 03:16:34

25 company documents to the extent that I could. I 03:16:38

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1 mean, that's my preference, to have the documents 03:16:44
2 from the people who were involved in the situation, 03:16:48
3 rather than some other source. 03:16:52

4 So, I mean, I guess that would be the way 03:16:56
5 that I would characterize it, it's based largely on 03:17:02
6 documents from the people involved in the industry. 03:17:06

7 Q. But there's no label or name to the research 03:17:12
8 approach that you have used in this case; is that 03:17:14
9 correct? 03:17:16

10 MR. O'FALLON: Objection, mischaracterizes 03:17:18
11 his testimony. 03:17:20

12 A. I mean, there's no, kind of, label that would be a 03:17:28
13 chapter out of a research design textbook that I 03:17:32
14 would say, okay, I will take that label and stick it 03:17:34
15 on this. 03:17:34

16 I mean, I gave you a characterization of 03:17:38
17 it just now, that it was, you know, one in which, 03:17:42
18 you know, I chose to rely on the internal documents 03:17:44
19 of the companies. 03:17:46

20 Q. You didn't use an experimental research approach, 03:17:50
21 did you? 03:17:50

22 A. I did not conduct any experiments in the course of 03:17:54
23 my -- development of my opinion in this case, no. 03:18:00

24 Q. And you didn't use the survey approach to research 03:18:04
25 in arriving at your opinions in this case, did you? 03:18:06

1 A. I did not myself conduct any surveys. I used the 03:18:14
2 results of surveys which were reported in the 03:18:16
3 internal documents of the companies in forming my 03:18:20
4 opinion, but I did not myself conduct independent 03:18:24
5 surveys. 03:18:24
6 Q. Do you believe everything you read in the tobacco 03:18:28
7 industry documents? 03:18:30
8 MR. O'FALLON: Objection. 03:18:34
9 A. No. 03:18:34
10 Q. What didn't you believe? 03:18:38
11 MR. O'FALLON: Objection, overbroad. 03:18:42
12 A. You know, I don't believe the statements that were 03:18:50
13 made in the tobacco industry documents, for example, 03:18:52
14 that the marketing activities that we as the 03:19:00
15 industry participants engage in, are not directed 03:19:04
16 toward youth ever. There were a number of 03:19:12
17 characterizations made by people in the industry 03:19:16
18 that I don't agree with. 03:19:18
19 Q. Did you do anything else in your methodology in 03:19:30
20 arriving at your opinions as expressed in 3306 that 03:19:34
21 we haven't discussed yet? 03:19:36
22 A. Yeah, I guess so, in the sense that, you know, when 03:19:50
23 I am putting together a report like this and you are 03:19:52
24 looking at -- I mean, I tried to -- within the 03:19:58
25 context of internal documents, I tried to look at a 03:20:02

1	variety of different kinds, you know, from internal	03:20:04
2	memos, from surveys, to marketing planning documents	03:20:08
3	done on a continual basis over time. And basically	03:20:12
4	I kind of checked to see, you know, do these things	03:20:16
5	form a coherent whole. So that's -- that, to me, is	03:20:24
6	part of my methodology.	03:20:26
7	When you are constructing an opinion like	03:20:28
8	this based on internal documents, I think you look	03:20:34
9	at, kind of, what's the consistency between what I	03:20:36
10	see here and here and do they come together to form	03:20:40
11	a coherent whole or not. So that would be part of	03:20:44
12	my methodology.	03:20:44
13	Q. When you teach research methodology, do you instruct	03:20:48
14	your students to be very thorough in their research?	03:20:50
15	A. You know, without kind of using that particular	03:21:00
16	terminology, you know, it's hard to imagine one	03:21:04
17	saying, well, today's lecture is don't be thorough	03:21:08
18	in your research.	03:21:10
19	But, I mean, I think I basically try to	03:21:12
20	teach them that they should be -- they should use	03:21:16
21	the research methodologies appropriate to the	03:21:18
22	question that they are looking at and they should	03:21:20
23	apply those research methodologies in a rigorous	03:21:26
24	way.	03:21:28
25	Q. If one were to apply -- to use a research	03:21:30

1	methodology that was inappropriate for the question,	03:21:34
2	what would happen?	03:21:38
3	MR. O'FALLON: Objection.	03:21:38

4 A. Well, I mean, in general if one uses an 03:21:44
5 inappropriate research methodology to try to answer 03:21:46
6 a question, you are not able to answer the question. 03:21:52
7 Q. Or the results you get would be invalid? 03:21:54
8 MR. O'FALLON: Objection, misstates the 03:21:58
9 question -- misstates the answer. 03:22:00
10 A. That's not always the case, not always true. 03:22:06
11 Q. But sometimes it is? 03:22:06
12 A. Well, I mean, it's more of what I first said, that 03:22:18
13 you collect data and it really doesn't -- you know, 03:22:22
14 through the research approach that you went through, 03:22:26
15 it really doesn't allow you to answer the questions 03:22:28
16 in a reliable way. 03:22:30
17 Q. Do you believe you were thorough in preparing -- in 03:22:34
18 conducting the research which resulted in your 03:22:38
19 opinions as expressed in 3306? 03:22:42
20 A. I believe I was. 03:22:42
21 Q. Do you believe you were accurate in the research you 03:22:44
22 conducted in preparing 3306? 03:22:50
23 A. I believe I was accurate in the -- "accurate" isn't 03:22:54
24 so much a term you apply to the research process. 03:22:58
25 But I believe I am accurate in the statements that I 03:23:00

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1 make in my expert report. 03:23:02
2 Q. You have published in peer reviewed journals, have 03:23:06
3 you not? 03:23:06
4 A. I have. 03:23:06
5 Q. Peer reviewed journals carry a greater weight of 03:23:12

6 credibility than nonpeer reviewed journals, don't 03:23:16

7 they? 03:23:16

8 A. It depends on where you live. You know, Harvard 03:23:20

9 Business Review, for example, is not a peer reviewed 03:23:22

10 journal, at Harvard Business School. Which carries 03:23:30

11 more weight, the Journal of Consumer Research or 03:23:32

12 Harvard Business Review? Harvard Business Review. 03:23:36

13 Q. Setting aside the Harvard Business Review as an 03:23:40

14 example, wouldn't you agree that in general peer 03:23:44

15 reviewed journals are the better journals? 03:23:50

16 A. Yeah. You know, I really don't mean to run around 03:23:56

17 your question at all. I mean, I am generally 03:23:58

18 accepting the spirit of your question, but there are 03:24:02

19 kind of ladders of -- what should I say? -- ladders 03:24:10

20 of quality, I guess, in the journals. 03:24:12

21 You know, there are some peer reviewed 03:24:14

22 journals which are really not so great. But, you 03:24:20

23 know, I mean, certainly to publish in Marketing 03:24:28

24 Science, that's a big deal, I mean, because that's a 03:24:30

25 peer review that is really tough. 03:24:32

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1 And so, yeah, as compared to invited, an 03:24:38

2 invited paper in a research volume or proceedings. 03:24:42

3 Yeah, I mean, I think generally if you look at 03:24:46

4 somebody coming up for promotion, generally those 03:24:48

5 papers that are peer reviewed are kind of going to 03:24:50

6 get more weight than ones which aren't. 03:24:54

7 Q. What value does the peer review process add? 03:25:02

8 A. Add to what, what does it add? 03:25:04

9 Q. To the publication. 03:25:08

10 A. Sometimes nothing. 03:25:14

11 Sometimes it can improve the ultimate 03:25:24

12 publication by bringing to the attention of the 03:25:26

13 author, gee, there's a mistake, you know, your 03:25:34

14 original submission has a mistake in it, I can't 03:25:38

15 derive -- when I try and go derive equation 8 from 03:25:44

16 equation 9, I can't get there. 03:25:46

17 It can improve the clarity of the 03:25:48

18 presentation, like people will come back and say, 03:25:50

19 well, I think you are right, but I don't really 03:25:52

20 understand what it is you are saying here. 03:25:58

21 They can say, well, this paper was kind of 03:26:02

22 interesting and it's right, but what would really be 03:26:04

23 interesting is if you could take it the next step 03:26:06

24 and say X, Y, and Z. 03:26:08

25 So I think a good peer review process can, 03:26:14

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1 you know, ultimately make the research product which 03:26:18

2 a journal is publishing better. And I guess that's 03:26:20

3 why a lot of us participate in that process, both 03:26:26

4 from the author side and the reviewer side. 03:26:30

5 Q. You have not submitted the opinions expressed in 03:26:32

6 3306 to any peer review process, have you? 03:26:36

7 MR. O'FALLON: Do you want to stipulate to 03:26:38

8 allow this to all be published, including all your 03:26:40

9 confidential documents? We could probably go and do 03:26:44

10 that. The JAMA article was peer reviewed and it 03:26:48

11 contained a lot of your information. 03:26:50

12 A. To answer your specific question, no, I have not 03:26:54

13 submitted this to a peer reviewed journal. 03:26:58

14 MR. O'FALLON: Just to make the record 03:27:00

15 clear -- and let's be fair about it -- I believe the 03:27:02

16 protective order would restrict him from doing so. 03:27:04

17 Correct? 03:27:06

18 MR. PURVIS: Probably. 03:27:08

19 MR. O'FALLON: Yeah. So it's not really a 03:27:10

20 fair question. 03:27:12

21 A. It would be the furthest thing from my mind at this 03:27:16

22 point in time, to do that. 03:27:24

23 Q. I think I know the answer to this next question, but 03:27:28

24 are you a cigarette smoker? 03:27:30

25 A. No, I am not. 03:27:32

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1 Q. Have you ever been a cigarette smoker? 03:27:34

2 A. I tried it on several occasions. 03:27:34

3 Q. Have you ever been a regular cigarette smoker? 03:27:38

4 A. No, I have not. 03:27:38

5 Q. When you say you "tried it on several occasions," 03:27:44

6 does that mean one cigarette or smoke for three or 03:27:46

7 four days or -- 03:27:48

8 A. Well, this is going back, what, 35 years or 03:27:52

9 something, so my recollection is a little vague. 03:27:54

10 But I think it's just, you know, a couple specific 03:28:00

11 occasions I smoked a couple of cigarettes. 03:28:04

12 Q. Why? 03:28:04

13 A. Well, as I said, it was 35 years or so ago and I can 03:28:12

14 vaguely remember that I did it. I really can't 03:28:18
15 reconstruct for you my motivations in doing it. 03:28:20
16 Q. Were you alone? 03:28:22
17 A. No. 03:28:26
18 Q. Who were you with? 03:28:28
19 A. A friend on one occasion. I can't remember what the 03:28:34
20 circumstances were on the other one. 03:28:34
21 Q. Was the friend smoking? 03:28:36
22 A. Yes. 03:28:36
23 Q. Did you smoke because your friend was smoking? 03:28:42
24 A. Well, as I just said, I am not able to kind of 03:28:46
25 reconstruct exactly why I smoked on that particular 03:28:50

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1 occasion. I mean, I was with friends who smoked 03:28:56
2 other times and didn't smoke, so what the motivation 03:29:02
3 was at that time I can't reconstruct for you 35 03:29:04
4 years later. 03:29:06
5 Q. Is your wife a cigarette smoker? 03:29:08
6 A. No, she is not. 03:29:08
7 Q. Has she ever been a cigarette smoker? 03:29:10
8 A. No, she has not. 03:29:12
9 Q. Do you have any children? 03:29:12
10 A. I do. 03:29:14
11 Q. Are any of them cigarette smokers? 03:29:16
12 A. Not to my knowledge. 03:29:18
13 Q. Have you ever belonged to any organizations opposed 03:29:32
14 to cigarette smoking, for example, GASP? 03:29:38
15 A. No. 03:29:40

16	Q.	ASH?	03:29:40
17	A.	No.	03:29:40
18	Q.	American Cancer Society?	03:29:44
19	A.	No. Let me just elaborate on my last answer for a	03:29:54
20		minute. I have made donations to the American	03:29:58
21		Cancer Society at one point. Whether that kind of	03:30:02
22		got you a membership, I don't know.	03:30:06
23	Q.	Do you know Ed Popper?	03:30:08
24	A.	Yes.	03:30:10
25	Q.	How do you know him?	03:30:10

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1	A.	I think he got his doctorate at Harvard Business	03:30:16
2		School, I am pretty sure that's right. I have seen	03:30:18
3		him around school sometimes, and I think at least at	03:30:22
4		one time he was a professor up in the Boston area.	03:30:26
5	Q.	Have you ever talked to him about cigarette	03:30:28
6		litigation?	03:30:28
7	A.	No.	03:30:30
8	Q.	Do you believe cigarette smoking causes lung cancer?	03:30:40
9	A.	You know, in general, as we discussed earlier, I am	03:30:48
10		not an expert on the etiology of diseases and so	03:30:52
11		forth. But based on what I know, I would say I	03:30:56
12		would believe that cigarette smoking causes lung	03:30:58
13		cancer.	03:30:58
14	Q.	When did you come to that belief?	03:31:00
15	A.	Gee, I can't pin that down in time for you.	03:31:08
16	Q.	Was it within the last five years?	03:31:12
17	A.	I would say it extends back further in time than	03:31:20
18		that, but I doubt that I could be more precise than	03:31:28

19	that.	03:31:28
20	Q. By my calculations, I think you are 49 years old.	03:31:30
21	A. Correct.	03:31:32
22	Q. In 1964 you would have been 17 years of age, is that	03:31:36
23	correct, roughly?	03:31:40
24	A. Yeah, roughly.	
25	Q. Plus or minus one year?	03:31:42

1	A.	Plus or minus one, depending upon the time of the	03:31:44
2		year, right.	03:31:46
3	Q.	Do you recall in January of 1964 the landmark	03:31:48
4		surgeon general's report on smoking and health?	03:31:52
5	A.	Do I now recall that I, as a 16-year-old, became	03:31:58
6		aware of that report?	03:32:00
7	Q.	Correct.	03:32:00
8	A.	No, I do not now recall that 30-something years ago,	03:32:04
9		at the time of its publication, I became aware of	03:32:08
10		the landmark surgeon general's report.	03:32:10
11	Q.	Were your parents cigarette smokers?	03:32:12
12	A.	They were.	03:32:12
13	Q.	Did you ever nag them to quit?	03:32:18
14	A.	No, I did not.	03:32:20
15	Q.	When you had that cigarette with your friend, did	03:32:24
16		you light up in front of your parents?	03:32:26
17	A.	No, I did not.	03:32:28
18	Q.	Why not?	03:32:28
19	A.	Well, I mean, they weren't around; we were at	03:32:34
20		different places when this happened. And, again,	03:32:36

21 you know, why -- what my motivation was at that 03:32:42
22 particular point in time I don't recall. But it 03:32:44
23 wasn't in front of my parents because my parents 03:32:46
24 were somewhere else. 03:32:48
25 Q. Did your parents have rules about smoking when you 03:32:50

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1 were a teenager? 03:32:52
2 A. Gee, not that I explicitly recall, no. 03:33:00
3 Q. Did your parents ever tell you not to begin smoking? 03:33:04
4 A. Not that I recall. 03:33:04
5 Q. How old are your children? 03:33:10
6 A. My daughter is 20 and my son is 11. 03:33:14
7 Q. Have you told your children not to smoke? 03:33:16
8 A. Certainly my 20-year-old daughter, I have indicated 03:33:28
9 to her what my judgment is on that. 03:33:36
10 My 11-year-old, I don't know that I have 03:33:40
11 said to him, Nicky, don't smoke, but I have 03:33:44
12 suggested to him -- more than suggested to him, you 03:33:48
13 know, that smoking is really something that I would 03:33:50
14 hope would be something that you never do. 03:33:52
15 Q. And is that the general nature of your admonition to 03:33:56
16 your daughter as well? 03:33:58
17 A. Well, yeah, that would be the general nature of it. 03:34:08
18 I mean, it would be, obviously, expressed in a 03:34:10
19 different way to a 20-year-old rather than a 03:34:14
20 11-year-old. But I basically say to her, look, 03:34:18
21 here's, you know, what the data are on this and, you 03:34:26
22 know, I really don't think it would be a great 03:34:28
23 idea. But she is going to make up her own mind. 03:34:32

24 Q. Was your admonition to your children motivated 03:34:34
25 because of your concern of the possible health 03:34:36

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1 consequences of cigarette smoking on their health? 03:34:40

2 A. That was generally it, yeah. 03:34:46

3 Q. When you read professional literature, publications 03:35:02
4 and journals about advertising, who are the leaders 03:35:12
5 of that field in your opinion? 03:35:14

6 MR. O'FALLON: Objection, foundation. 03:35:16

7 A. Well, I would say from -- you know, as I mentioned 03:35:26
8 earlier, I think Dave Aaker's work is -- has done 03:35:32
9 good work in that area. 03:35:32

10 And from a more managerial side of things, 03:35:38
11 one of my colleagues, John Quelch, and his 03:35:40
12 co-author, Paul Farris, from a more managerial 03:35:46
13 presentation on general advertising, promotion 03:35:50
14 strategies. 03:35:50

15 Q. Anyone else come to mind as someone you would 03:35:54
16 recognize as an expert in advertising? 03:35:56

17 A. Well, those would be the primary people that I would 03:36:00
18 think of. 03:36:02

19 Q. How do you measure the effectiveness of advertising? 03:36:10

20 A. One can do it in a number of different ways. You 03:36:16
21 know, you can -- the first level of distinction is 03:36:24
22 to say, okay, am I going to try to measure its 03:36:28
23 communication effect or am I going to try to measure 03:36:30
24 a sales effect. 03:36:32

25 So some people would say my objective with 03:36:34

1 this advertisement is to make sure that people see a 03:36:40
2 Mazda Miata as a sporty, fun car or appropriate to 03:36:48
3 somebody over the age of 40. 03:36:50
4 So you run the advertising and then you 03:36:52
5 test -- you know, do a survey or whatever to test 03:36:56
6 whether that message is getting through, and then 03:37:00
7 leave the link from -- that message getting through 03:37:02
8 to sales outside something you specifically test. 03:37:06
9 Other people would test it by looking at the sales 03:37:10
10 impact. 03:37:12
11 Q. If you look at the sales impact and after a certain 03:37:16
12 campaign is run and sales increase, would you say 03:37:20
13 that was a successful advertising campaign? 03:37:22
14 A. No. Your investigation has to be a little broader 03:37:30
15 than that because advertising has -- there's a 03:37:34
16 number of other things going on which would affect 03:37:36
17 sales levels and so that's why some people have 03:37:40
18 argued for looking at the communication effects of 03:37:42
19 advertising rather than the ultimate sales effect. 03:37:46
20 Q. In the example I gave you of sales went up, it could 03:37:52
21 have been attributable to a price decrease, couldn't 03:37:56
22 it, not the advertising? 03:37:58
23 A. It could -- right, it could be attributable to some 03:38:02
24 other element of the firm's own marketing mix which 03:38:06
25 would influence sales, their product quality or 03:38:12

1 their -- as you said, their pricing. Or it could be 03:38:16
2 due to an action of a competitor, a competitor 03:38:18
3 increased their price or tripled their advertising 03:38:20
4 budget. 03:38:22
5 Q. It's a pretty complicated process, isn't it, 03:38:24
6 advertising? 03:38:26
7 A. We talked about that a little bit earlier. I think, 03:38:30
8 you know, we do understand a lot about how 03:38:34
9 advertising works, but it's a process which, you 03:38:42
10 know, goes on within the context of a lot of other 03:38:50
11 things going on in the overall marketing 03:38:50
12 environment. 03:38:52
13 Q. Is everyone affected by an ad in precisely the same 03:38:58
14 manner? 03:39:00
15 MR. O'FALLON: Objection. 03:39:02
16 A. In general I would say that there are individual 03:39:08
17 differences. I think that, you know, there would be 03:39:10
18 probably some cases where people respond in the same 03:39:16
19 way, but it's not, kind of, a going-in assumption 03:39:20
20 from the marketing literature, that everybody is 03:39:22
21 going to respond in the same way to an ad. 03:39:24
22 Q. That's because people are different, aren't they? 03:39:30
23 MR. O'FALLON: Objection. 03:39:34
24 A. People are different, the circumstances that they're 03:39:38
25 in are different, right, right. 03:39:40

1 Q. Their backgrounds are different, right? 03:39:46

2	A.	Do people's backgrounds differ?	03:39:48
3	Q.	Yes.	03:39:48
4	A.	Yes; people, individuals have different backgrounds,	03:39:54
5		yes.	03:39:54
6	Q.	And their education level differs, doesn't it?	03:39:56
7	A.	Yes; different people have different levels of	03:40:00
8		education, yes.	03:40:00
9	Q.	And their religious background differs, doesn't it?	03:40:04
10	A.	Different people have different religions, yes.	03:40:06
11	Q.	And their lifestyles differ, don't they?	03:40:10
12	A.	Lifestyles do differ across individuals, yes.	03:40:14
13	Q.	And those are just some of the factors that	03:40:16
14		influence a consumer's decision, aren't they?	03:40:18
15	A.	Well, in general, I mean, those would be potential	03:40:26
16		factors which could influence a consumer's decision	03:40:30
17		to purchase or not purchase a product.	03:40:34
18	Q.	Why do nonsmokers begin smoking cigarettes?	03:40:40
19		MR. O'FALLON: Objection, foundation.	03:40:42
20	A.	I mean, my belief about nonsmokers beginning to	03:40:44
21		smoke cigarettes is that they come to perceive the	03:40:50
22		value of smoking greater than the benefits -- they	03:40:56
23		perceive the value greater than the cost to them.	03:41:00
24	Q.	Can you identify for me the factors that contribute	03:41:08
25		to a nonsmoker giving greater value to smoking than	03:41:14

1		to the cost of smoking?	03:41:16
2	A.	Sure. The marketing activities of the cigarette	03:41:24
3		manufacturers would be one; perhaps the smoking	03:41:32
4		behavior of colleagues.	03:41:38

5 Q. That's called peer pressure, isn't it? 03:41:40

6 MR. O'FALLON: Objection. Let him finish 03:41:42

7 answering. You ask him a question, he's in the 03:41:46

8 middle of it. Let him finish it. If you want to 03:41:48

9 add something at the end of it, do that. 03:41:50

10 A. You know, other information that is available to the 03:41:56

11 consumer. 03:42:00

12 And the second one of those, I mean, I 03:42:06

13 really had -- I don't think it's necessarily 03:42:06

14 pressure. It may in some cases be perceived as 03:42:12

15 pressure or it may just be, you know, kind of word 03:42:16

16 of mouth, that -- you know, I don't exert any 03:42:20

17 particular pressure on you to adopt something, but I 03:42:24

18 tell you about it and so I communicate information 03:42:26

19 to you about it. 03:42:26

20 Q. Are you familiar with the body of literature of why 03:42:32

21 people begin smoking? 03:42:34

22 A. With the body of literature? 03:42:34

23 Q. (Nodding.) 03:42:36

24 A. Yes, I think I am familiar with the body of 03:42:38

25 literature on why people begin smoking. 03:42:40

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1 Q. And what are the factors enumerated in that body of 03:42:44

2 literature on why people start smoking; what's the 03:42:46

3 most important factor enumerated in that body of 03:42:50

4 literature? 03:42:50

5 MR. O'FALLON: Objection, it assumes that 03:42:52

6 there is one such most important factor. 03:42:56

7 A. The way that I -- you know, I have reviewed a body 03:42:58
8 of literature on this topic. The internal documents 03:43:00
9 are -- the tobacco industry documents are a body of 03:43:04
10 literature on this. And basically as I -- I mean, I 03:43:10
11 think that literature basically supports what I just 03:43:14
12 said. 03:43:14
13 Q. Have you reviewed any body of literature other than 03:43:16
14 the tobacco industry documents on why people begin 03:43:20
15 smoking? 03:43:22
16 A. Well, I think I answered that question earlier, that 03:43:26
17 we have determined that the tobacco industry 03:43:28
18 documents basically constitute the universe that I 03:43:32
19 reviewed in this particular case. 03:43:34
20 MR. O'FALLON: Tobacco industry documents 03:43:36
21 as we defined them here today. 03:43:40
22 BY MR. PURVIS:
23 Q. So you have reviewed no journal articles on the 03:43:42
24 subject of why people begin smoking? 03:43:46
25 MR. O'FALLON: That misstates the 03:43:48

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1 testimony. You've got journal articles identified 03:43:50
2 in your industry -- in your definition of industry 03:43:52
3 documents. 03:43:54
4 BY MR. PURVIS:
5 Q. Other than any journal articles which might be in 03:43:56
6 the tobacco industry documents, have you reviewed 03:43:58
7 any professional journal articles on the subject of 03:44:04
8 why people begin smoking? 03:44:06
9 A. Well, again, I just would be repeating my previous 03:44:10

10	answer, that the documents that I reviewed in coming	03:44:14
11	to my opinions and my judgments in this case are the	03:44:18
12	tobacco industry documents as we have been defining	03:44:20
13	them for the purposes of my deposition.	03:44:22
14	Q. And no other documents?	03:44:24
15	A. That's correct.	03:44:24
16	MR. O'FALLON: Objection, asked and	03:44:26
17	answered.	03:44:30
18	BY MR. PURVIS:	
19	Q. Do you believe it's possible for a nonsmoker to	03:44:34
20	begin smoking without seeing or hearing any	03:44:40
21	marketing efforts by tobacco companies?	03:44:42
22	MR. O'FALLON: Objection. That universe	03:44:44
23	doesn't exist.	03:44:46
24	A. Yeah, I'm not sure what the world is you want me to	03:44:56
25	create here.	03:44:58

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1	Q. Do you believe it's possible for a nonsmoker to	03:45:04
2	begin smoking in the absence of seeing or hearing	03:45:08
3	tobacco industry marketing efforts?	03:45:12
4	MR. O'FALLON: Objection. Also to the	03:45:12
5	extent that this includes foreign documents -- are	03:45:14
6	you referencing foreign markets? I just want it	03:45:18
7	clear that you haven't produced those documents to	03:45:20
8	us.	03:45:20
9	MR. PURVIS: We started off being	03:45:22
10	"objection, form," and that's fine. Now we are	03:45:24
11	getting into speaking objections. I am going to	03:45:28

12 have to ask you to simply limit your objections, 03:45:30
13 without speeches. 03:45:30
14 MR. O'FALLON: I am stating what's 03:45:36
15 happened and I want it clear for the record. 03:45:36
16 MR. PURVIS: The record speaks for 03:45:38
17 itself. 03:45:40
18 MR. O'FALLON: Yes, it does. 03:45:40
19 MR. PURVIS: So we don't need your 03:45:42
20 assistance. 03:45:42
21 MR. O'FALLON: I am part of the record, 03:45:44
22 sir. I know you would like to take this deposition 03:45:48
23 without me here, but you are stuck with me. 03:45:52
24 BY MR. PURVIS:
25 Q. How many ads is a typical consumer exposed to on an 03:45:56

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1 average day? 03:46:00
2 A. I forget what that number is estimated at now, but 03:46:06
3 it's a lot. 03:46:08
4 Q. Several hundred, if not more than a thousand, each 03:46:10
5 day? 03:46:10
6 A. As I say, I don't recall. I mean, I know some 03:46:16
7 people have calculated this or estimated this 03:46:20
8 number, but as I sit here at the moment I don't 03:46:22
9 recall it particularly. 03:46:24
10 Q. With respect to advertising in general, would you 03:46:28
11 agree that a person must be exposed to the 03:46:32
12 advertising before it will have any effect on 03:46:36
13 them -- before it possibly could have any effect on 03:46:38
14 them? 03:46:40

15	MR. O'FALLON: Objection.	03:46:42
16	A. Well, if a person does not see a marketing	03:46:54
17	instrument, advertising, distribution,	03:46:58
18	point-of-purchase display, whatever, I would say	03:47:02
19	that that particular device would not influence that	03:47:10
20	person directly. It may influence them indirectly	03:47:14
21	in the sense that it has the impact of inducing	03:47:18
22	somebody else to undertake an activity and starts a	03:47:26
23	word of mouth effect and that sort of thing.	03:47:28
24	Q. Is that commonly referred to as the third party	03:47:30
25	effect?	03:47:32

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1	A. That's not the term that I would use for it. I	03:47:38
2	mean, I would call it word of mouth more so than a	03:47:40
3	third party effect. There may be literature that	03:47:44
4	refers to it as the third party effect; I'm not	03:47:48
5	sure.	03:47:48
6	Q. Are you familiar with the reaffication effect?	03:47:52
7	A. Reaffication?	03:47:54
8	Q. (Nodding.)	
9	A. No, I am not familiar with that term.	03:47:56
10	Q. Are you familiar with the doctrine of LaPierre?	03:48:04
11	A. Doctrine of LaPierre? No, I don't believe I am	03:48:04
12	familiar with that doctrine of LaPierre.	03:48:08
13	Q. Have you ever worked for an advertising agency?	03:48:16
14	A. Let's see. I am just trying to think whether I have	03:48:30
15	ever given a speech to an ad agency or not. I may	03:48:38
16	have given a speech to an ad agency. I know I am on	03:48:44

17	tap to do one next month. I haven't acted in a	03:48:50
18	consulting capacity to an advertising agency.	03:48:52
19	Q. Have you ever worked for a public relations firm?	03:49:00
20	A. I don't believe so. Again, I know I haven't worked	03:49:10
21	in a consulting capacity to any. I am trying to	03:49:14
22	think. You know, I may have given a speech to one,	03:49:18
23	but I doubt it.	03:49:20
24	Q. You have never studied public relations?	03:49:28
25	MR. O'FALLON: Objection. That's not what	03:49:30

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1	he said.	03:49:30
2	MR. PURVIS: That's a separate question.	03:49:32
3	A. No. Public relations is a part of marketing	03:49:34
4	communications and so that's part of marketing, and	03:49:36
5	so I have studied that as a part of overall	03:49:42
6	marketing management.	03:49:48
7	You know, I am responsible for designing	03:49:50
8	the marketing management course for the MBA program,	03:49:54
9	so I have to kind of understand what it is we ought	03:49:58
10	to be putting in there about public relations.	03:50:00
11	Q. Do you hold any professional certifications?	03:50:04
12	A. No, other than my Ph.D. degree. I guess that's not	03:50:12
13	a professional certification, but... No, I guess	03:50:16
14	not.	03:50:16
15	Q. Do you know whether the ads which are reflected in	03:50:36
16	the tobacco industry documents we have discussed	03:50:38
17	were shown in Minnesota?	03:50:44
18	MR. O'FALLON: Objection. We are trying	03:50:46
19	to determine that right now.	03:50:48

20 A. You know, most of the marketing activity that I've 03:50:54
21 looked at in the tobacco industry documents, you 03:51:02
22 know, have been talking about national types of 03:51:04
23 campaigns. But I haven't traced down as to whether 03:51:08
24 a particular ad has been shown in the state of 03:51:12
25 Minnesota or not. 03:51:14

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1 Q. I direct your attention, Professor Dolan, to 03:51:20
2 Exhibit 3306, your expert report. I know you spent 03:51:24
3 some time with Mr. Falkenstein, but I do have a few 03:51:32
4 questions as well, if we could go over it. 03:51:34

5 A. Sure. 03:51:36

6 Q. From a structural point of view, is it -- it appears 03:51:40
7 to me you used the classic here's what I am going to 03:51:44
8 tell you, and then you tell us, and then you tell us 03:51:46
9 what you told. Is that the general structure of 03:51:50
10 what you have done here? 03:51:52

11 MR. O'FALLON: Objection to the 03:51:52
12 characterization. 03:51:54

13 A. Well, let's see. I said here is what I am going to 03:51:58
14 talk about and I guess I give you a summary and the 03:52:00
15 basis, and then I kind of run through it, and then I 03:52:04
16 summarize it again at the end, beginning on page 30. 03:52:08

17 Q. Direct your attention to page 2. The first sentence 03:52:16
18 of the first full paragraph says, if you will follow 03:52:20
19 along with me, "The industry's efforts in the 03:52:24
20 marketing of its products have been pervasive." Is 03:52:28
21 that what you said? 03:52:28

22 A. That's an accurate reading of what's there, right. 03:52:32
23 Q. What do you mean when you use the word "pervasive" 03:52:34
24 in that sentence? 03:52:36
25 A. I mean that they have been extensive. A lot of 03:52:42

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1 money has been spent on these marketing efforts, you 03:52:46
2 know, 4 billion in 1990, a couple of years later 03:52:48
3 it's up to 6 billion. 03:52:50
4 If you look at this amended report by 03:52:54
5 Mr. Much there, I mean, I think it was -- 18 billion 03:53:04
6 is the number that he has in there for Philip Morris 03:53:10
7 over a 25-year period, I think it is. 03:53:14
8 So I just basically mean that there's been 03:53:14
9 an extensive amount of marketing activity undertaken 03:53:20
10 by the tobacco companies. 03:53:22
11 Q. So in that sentence when you use the word 03:53:30
12 "pervasive," you are speaking in terms of the 03:53:34
13 quantity of money spent? 03:53:34
14 MR. O'FALLON: Objection, misstates his 03:53:36
15 testimony. 03:53:38
16 A. Well, the quantity of money spent would be one 03:53:46
17 dimension of it. 03:53:48
18 The other part of it is I mean pervasive 03:53:50
19 in the sense that the marketing has involved a broad 03:53:56
20 array of techniques which, you know, I -- as I 03:54:00
21 mentioned on the previous page, we have advertising, 03:54:04
22 which we have talked a little bit about already. 03:54:06
23 But in addition to that, we are using sponsorships, 03:54:12
24 point-of-purchase displays, press releases, 03:54:16

25 appearances on news programs, promotional 03:54:18

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1 activities, distribution through a million different 03:54:20
2 outlets, new product introductions, product line 03:54:24
3 extensions. 03:54:24

4 So what I mean is they have spent a lot, 03:54:28
5 there has been a lot of money spent on these 03:54:30
6 activities, but also there's a very broad portfolio 03:54:34
7 of marketing techniques being brought to bear here. 03:54:38

8 Q. Many corporations use a broad portfolio of marketing 03:54:42
9 techniques to sell their products, don't they? 03:54:44

10 A. Yes, they do. 03:54:46

11 Q. There's nothing improper about using a broad 03:54:48
12 portfolio of marketing techniques to sell products, 03:54:50
13 is there?

14 MR. O'FALLON: Objection. 03:54:54

15 A. In and of itself there is nothing inappropriate 03:54:56
16 about it; in general it's a good idea. 03:54:58

17 Q. And the marketing techniques you listed there are, 03:55:00
18 in fact, legal in the United States, aren't they? 03:55:04

19 MR. O'FALLON: Objection, calls for a 03:55:06
20 legal conclusion. 03:55:08

21 A. As far as I know. I mean, obviously there are, you 03:55:12
22 know, regulations as to the particular kind of 03:55:16
23 advertising that one can do; it can't be deceptive 03:55:20
24 and so forth. 03:55:22

25 But in terms of these activities being 03:55:24

1 legal in a general sense, I mean, there's no 03:55:30
2 prohibition that I am aware of against, you know, 03:55:32
3 all kinds of advertising, all kinds of 03:55:36
4 point-of-purchase displays. 03:55:38

5 Q. Many consumer product corporations use most, if not 03:55:42
6 all, of these techniques to market their products, 03:55:46
7 don't they? 03:55:46

8 MR. O'FALLON: Objection, relevance. 03:55:50

9 A. Yeah, I mean, many would. I mean, you know, we 03:55:56
10 could -- to get to "many" we might have to delete 03:56:02
11 appearances on news programs. 03:56:02

12 But, I mean, certainly the general sense 03:56:06
13 of your question about do consumer products 03:56:08
14 companies think about, sort of, a total marketing 03:56:12
15 approach using a broad range of activities in their 03:56:18
16 marketing mix, I mean, yes, they do. 03:56:24

17 Q. The tobacco industry documents that you have 03:56:24
18 reviewed tend to cover a period from approximately 03:56:28
19 1954 to very recently, correct? 03:56:30

20 A. Right. 03:56:32

21 Q. Over that almost 50-year period of time, how many 03:56:34
22 appearances on news programs did you document in the 03:56:38
23 tobacco industry documents? 03:56:40

24 A. How many did I document? 03:56:42

25 Q. How many did you count? 03:56:44

1 A. I didn't count. 03:56:46

2 Q. Do you have an estimate as you sit here today? 03:56:48

3 A. I don't. 03:56:48

4 Q. Page 2 again, directing your attention to the middle 03:56:56

5 of the page, Roman numeral (ii). You indicate that 03:57:00

6 you are going to address the addictive nature of 03:57:06

7 cigarettes. Is that a fair reading of -- 03:57:10

8 MR. O'FALLON: Objection. 03:57:10

9 A. I will address the representations which the 03:57:16

10 cigarette manufacturers and trade associations have 03:57:18

11 made. I will rely on another expert in the case for 03:57:24

12 the information about the addictive nature of 03:57:28

13 cigarettes. 03:57:30

14 Q. That's my point exactly. You will be offering no 03:57:32

15 opinions in this case that cigarettes are indeed 03:57:36

16 addictive, will you? 03:57:36

17 MR. O'FALLON: Objection. 03:57:38

18 A. I will be relying on Dr. Hurt's opinion in that 03:57:42

19 matter. 03:57:42

20 Q. But that opinion is outside your expertise, is it 03:57:48

21 not? 03:57:48

22 A. Well -- 03:57:50

23 MR. O'FALLON: Objection. 03:57:54

24 A. What's within my expertise is to talk about the 03:57:56

25 representations of the tobacco industry with respect 03:57:58

1 to that matter. It is not within my expertise to 03:58:06

2 offer a medical judgment on that. 03:58:10

3	Q.	Could I direct your attention to page 3 of	03:58:12
4		Exhibit 3306. Six lines down and three words	03:58:26
5		indented there's a sentence that begins with the	03:58:28
6		word "Instead." Are you with me?	03:58:32
7	A.	Yes.	03:58:32
8	Q.	I am going to read that, and just verify I am	03:58:36
9		quoting it accurately. "Instead of meeting these	03:58:38
10		requirements, the industry used its research program	03:58:40
11		to perpetuate a story of 'continuing controversy'	03:58:46
12		and 'open debate' about the health effect of	03:58:50
13		cigarettes wherein more research was continually	03:58:54
14		required to answer key questions." Did I read that	03:59:00
15		correctly?	03:59:00
16	A.	I believe so.	03:59:02
17	Q.	What time frame does that statement refer to?	03:59:06
18	A.	The time frame refers to, really, starting in 1954.	03:59:16
19		As I lay out in section B there starting on page 9,	03:59:20
20		I sort of look over this continuing record from, you	03:59:24
21		know, '54 through very recently.	03:59:28
22	Q.	When did science determine that cigarette smoking	03:59:30
23		caused human disease?	03:59:32
24	A.	When did science determine that?	03:59:36
25		MR. O'FALLON: I will object.	03:59:40

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1	A.	Yeah, I don't have a date on which science	03:59:50
2		determined that smoking caused disease.	03:59:56
3	Q.	Did science know that smoking caused lung cancer in	04:00:00
4		1955?	04:00:00
5	A.	Well, there had been some studies in the '50s, I	04:00:16

6	believe, making those linkages. But certainly, you	04:00:24
7	know, the record of studies, you know, grew over	04:00:30
8	time.	04:00:30
9	Q. Do you know when science concluded cigarette smoking	04:00:36
10	caused lung cancer?	04:00:38
11	MR. O'FALLON: I will object to the word	04:00:40
12	"science."	04:00:40
13	A. Yeah. Could you tell me what --	04:00:42
14	Q. Do you know when the scientific community generally	04:00:44
15	concluded that cigarette smoking definitely caused	04:00:50
16	lung cancer?	04:00:50
17	A. Well, what I do know is that in 1958 when the people	04:00:52
18	from B.A.T. came and visited and went around to talk	04:00:56
19	to 35 people in the industry and in the scientific	04:00:58
20	community, basically their conclusion was that, you	04:01:04
21	know, there was one person who denies this linkage	04:01:10
22	and, you know, the conclusion which he draws is	04:01:16
23	certainly not justified, as I set out there in the	04:01:20
24	middle of page 9.	04:01:22
25	So, you know, exactly when science as a	04:01:24

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1	community concluded that, I don't know exactly how	04:01:30
2	one would put a time on that. But, you know, to me	04:01:34
3	what's relevant is what B.A.T. found in 1958.	04:01:38
4	Q. You used the phrase "open debate" in this sentence,	04:01:42
5	correct? Page 3.	04:01:46
6	A. Page 3 I did, yes.	04:01:50
7	Q. When did it cease to be an open debate about the	04:01:58

8 health effects of cigarettes? 04:01:58

9 MR. O'FALLON: Objection, asked and 04:02:02

10 answered. 04:02:04

11 A. Well, I think the point is that internally within 04:02:08

12 the tobacco companies -- you know, here is B.A.T. in 04:02:14

13 1958 saying, you know, we went around, we talked 04:02:20

14 to -- I don't quote this here, but I think I counted 04:02:24

15 35 people that they went around and visited. 04:02:26

16 They only found one individual who would 04:02:28

17 disagree with the proposition that smoking causes 04:02:32

18 lung cancer if by causation we mean any chain of 04:02:40

19 events which finally leads to lung cancer and which 04:02:42

20 involves smoking as an indispensable link. 04:02:46

21 So, you know, that's what's happening 04:02:50

22 inside the company. And then, you know, you see 04:02:52

23 over the next couple pages I set out how despite 04:03:00

24 what is known internally, you know, we have these 04:03:04

25 statements that it's still an open issue. 04:03:08

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1 So, I mean, it's the disconnect between 04:03:12

2 what's known -- you know, what is kind of recognized 04:03:18

3 within the companies and what their public 04:03:20

4 statements are. 04:03:20

5 Q. Professor, do you know whether the B.A.T. people you 04:03:22

6 are referring to talked to the right people when 04:03:24

7 they came to the United States on that visit? 04:03:26

8 MR. O'FALLON: Objection. Do you know 04:03:28

9 they didn't? 04:03:30

10 A. Well, I looked at the list of people that they 04:03:32

11 talked to and, you know, I don't -- I noted that 04:03:40
12 TIRC was the recipient of multiple visits. And as 04:03:46
13 to my -- well, who the right people were and how we 04:03:52
14 would define that, I mean, I'm not sure. 04:04:12
15 Q. In your opinion, what was the effect on the American 04:04:14
16 public of the "continuing controversy" and the "open 04:04:18
17 debate" that you refer to in this sentence? 04:04:18
18 A. The impact was that it increased the perceived value 04:04:28
19 which some people placed on cigarette smoking 04:04:32
20 because there was statements made that the tobacco 04:04:38
21 industry said we are going to research this 04:04:40
22 question, we understand a question has been raised, 04:04:42
23 and we will dutifully report to you the findings of 04:04:46
24 our research. 04:04:46
25 And so here are the people who are in the 04:04:50

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1 industry saying, you know, gee, it's still an open 04:04:52
2 question, we haven't gotten it figured out yet, we 04:04:56
3 are doing more research. 04:04:56
4 Q. What evidence do you have that there was an 04:04:58
5 increased perceived value as a result of the 04:05:02
6 "continuing controversy" and "open debate"? 04:05:06
7 A. I think it is my understanding of basic consumer 04:05:10
8 behavior in this product category. 04:05:12
9 Q. But you have gathered no data on that subject; is 04:05:14
10 that correct? 04:05:16
11 MR. O'FALLON: Objection, that's not his 04:05:18
12 testimony. 04:05:18

13 A. I wouldn't agree with that at all. I mean, the 04:05:22
14 tobacco industry documents include extensive 04:05:24
15 information on what consumer behavior is like in 04:05:26
16 this product category. 04:05:28

17 One can go to the foundations of marketing 04:05:30
18 and say, okay, with this consumer behavior, what is 04:05:34
19 going to be the impact of messages by the 04:05:36
20 manufacturers of the product saying, well, it's an 04:05:40
21 open debate, in contrast to, yeah, our products have 04:05:46
22 serious health risks associated with them. 04:05:48

23 What's the impact of that going to be on 04:05:50
24 the perceived value that this customer who is 04:05:54
25 conflicted and, as one company put it, beleaguered, 04:06:02

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1 you know, looking for justification for continuing 04:06:04
2 smoking? I think it's -- I disagree with you that 04:06:10
3 that there is no data that speaks to that point. 04:06:12

4 Q. But the data you are referring to is contained 04:06:14
5 within the tobacco company documents? 04:06:16

6 A. The data that I am referring to just now is 04:06:20
7 contained within the tobacco company documents. 04:06:22

8 Q. And that's the only data you are relying on to 04:06:24
9 support the opinion you have just given? 04:06:26

10 MR. O'FALLON: Objection. Again, tobacco 04:06:28
11 company documents as we have defined them here 04:06:30
12 today. 04:06:30

13 A. The tobacco company documents are the only thing 04:06:34
14 that I am relying on, right. But not that one -- I 04:06:38
15 gave you one specific example just now of the value 04:06:42

16 increasing for consumers; that was one specific 04:06:50
17 example. 04:06:50
18 Q. Do you contend that the American public in the 1960s 04:06:52
19 did not believe cigarette smoking was dangerous to 04:06:58
20 health and addictive? 04:07:02
21 A. Let me separate the two questions. There have been 04:07:04
22 a number of surveys done which ask the question, you 04:07:10
23 know, do you perceive smoking as hazardous to your 04:07:14
24 health. And I believe the majority of people at 04:07:18
25 that time answered, yes, they believed it was 04:07:22

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1 hazardous to your health. 04:07:24
2 But, as we talked about this morning, you 04:07:26
3 know, the depth of their knowledge about that and 04:07:28
4 the full implications of that, you know, aren't as 04:07:34
5 well documented. 04:07:36
6 And as I say at the end of the report, I 04:07:38
7 mean, there are antismoking messages out there which 04:07:42
8 are impacting people's perceptions of the value of 04:07:46
9 smoking. But what the tobacco industry is doing is 04:07:50
10 providing, basically, counterarguments to those 04:07:54
11 antismoking messages. 04:07:56
12 Q. Which do you believe are more credible, the 04:07:58
13 information put out by the antismoking organizations 04:08:00
14 or statements about smoking and health put out by 04:08:04
15 the tobacco industry? 04:08:04
16 MR. O'FALLON: Objection, compound. 04:08:06
17 A. You know, I don't know which people find more 04:08:14

18 credible because of the fact that, you know, 04:08:16
19 basically what the tobacco industry did was say we 04:08:22
20 appreciate the fact that there's a question, we are 04:08:26
21 setting up this research organization, we are going 04:08:28
22 to investigate this, it's our basic responsibility, 04:08:32
23 we care about you as customers, who would know more 04:08:36
24 about a product than the manufacturers of the 04:08:38
25 product. So I think it's not clear that the tobacco 04:08:46

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1 companies would necessarily be less credible. 04:08:50
2 Q. Do you believe the American public today still 04:08:54
3 relies on any representations from the tobacco 04:08:56
4 industry about smoking and health? 04:08:58
5 A. Oh, I believe that there are some people who -- the 04:09:06
6 fact that the tobacco industry is still making 04:09:12
7 representations about the value of smoking, they're 04:09:20
8 relying on that information because -- and you look 04:09:24
9 at what the tobacco companies have said their role 04:09:26
10 is. 04:09:26
11 I mean, we have a customer who is 04:09:28
12 conflicted between the knowledge that maybe they are 04:09:34
13 doing something -- they are thinking that this isn't 04:09:36
14 good for my health or I have my family that is 04:09:40
15 really encouraging me to quit and yet I am still 04:09:44
16 smoking. And they look to the tobacco companies for 04:09:46
17 self-justification to perpetuate the habit. 04:09:52
18 Q. Professor, could I direct your attention to the 04:09:54
19 middle paragraph on page 3. 04:09:58
20 A. Um-hmm.

21 MR. O'FALLON: If we are at a good 04:10:02
22 breaking point? 04:10:04
23 MR. PURVIS: Sure. 04:10:06
24 (Break taken.) 04:19:20
25

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1 BY MR. PURVIS:
2 Q. Are you ready to proceed, Professor? 04:19:22
3 A. I am. Thank you. 04:19:22
4 Q. Again directing your attention to the middle 04:19:24
5 paragraph on page 3, last full sentence, which I am 04:19:30
6 going to read. It states, "The contention thus was 04:19:34
7 that the overall size of the market was not 04:19:42
8 something anyone in the industry tried to impact 04:19:42
9 through any means." 04:19:44
10 Is that a correct statement of your 04:19:44
11 opinion? 04:19:46
12 A. Yes, it is. 04:19:46
13 Q. That's based on your review of the tobacco industry 04:19:48
14 documents? 04:19:48
15 A. Yes, that's correct. 04:19:50
16 Q. In your opinion, was the tobacco industry trying to 04:19:52
17 increase the overall size of the market? 04:19:56
18 A. Yes. 04:19:56
19 Q. In your opinion, is every consumer products company 04:20:08
20 that advertises its product trying to increase the 04:20:10
21 aggregate size of its market? 04:20:12
22 A. Every consumer... Not necessarily. It's not 04:20:34

23 necessarily the case that somebody who is marketing 04:20:38
24 their product, including in the marketing 04:20:40
25 advertising, is trying to increase the overall size 04:20:42

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1 of the market. 04:20:42
2 Q. The quotations reflected in your report, which is 04:20:48
3 3306, indicate that the tobacco industry claims that 04:20:52
4 its marketing efforts are directed at maintaining 04:20:56
5 consumer brand loyalty and inducing switching; is 04:21:00
6 that correct? 04:21:02
7 A. I would say that's a fair summary of the statements 04:21:06
8 of the industry as to what the purposes of their 04:21:10
9 marketing activities were, basically to influence 04:21:14
10 brand -- you know, maintain brand loyalties and 04:21:16
11 induce switching, rather than induce people to start 04:21:20
12 or to not quit. 04:21:20
13 Q. Is it possible for consumer products companies to 04:21:24
14 have as their marketing goal to maintain brand 04:21:28
15 loyalty and induce switching alone? 04:21:30
16 MR. O'FALLON: Objection, foundation. 04:21:34
17 A. Is it possible for someone to have that as a goal? 04:21:38
18 Q. Yes, to the exclusion of increasing the aggregate 04:21:44
19 size of the market. 04:21:46
20 A. It would be possible for someone to have that goal. 04:21:48
21 Q. When you talk about the concept of increasing the 04:21:52
22 aggregate size of the market, you are meaning 04:21:56
23 increase the number of users of a particular product 04:21:58
24 over time? 04:22:04
25 A. Well, either -- I mean, it could be either that or 04:22:10

1 the total consumption of the product. 04:22:12

2 Q. Do the manufacturers of Tide detergent advertise to 04:22:18

3 increase the number of people who wash clothes? 04:22:22

4 MR. O'FALLON: Objection, foundation, 04:22:24

5 relevance. 04:22:24

6 A. I have not specifically looked at what the 04:22:28

7 objectives of the marketing of Procter & Gamble's 04:22:36

8 Tide detergent is; I have not looked at that. 04:22:40

9 Q. Have the marketers of Zest bath soap advertised and 04:22:44

10 used marketing techniques in order to increase the 04:22:46

11 number of people who take baths? 04:22:48

12 MR. O'FALLON: Objection, foundation, 04:22:52

13 relevance. 04:22:52

14 A. Again, I would have to give the same answer, I 04:22:54

15 haven't contacted P&G to ask them what their 04:22:58

16 objectives were in the marketing of Zest soap. 04:23:06

17 I do think that, you know, the situations 04:23:12

18 are somewhat different here in the sense that, you 04:23:14

19 know, we as far as -- I would imagine, you know, 04:23:18

20 there aren't too many of us who say, gee, I really 04:23:20

21 want to quit taking a bath and I need Procter & 04:23:26

22 Gamble to come along and tell me, no, you really 04:23:28

23 should keep taking baths. 04:23:30

24 Whereas, you know, the tobacco industry, 04:23:30

25 we know that a substantial number of people are 04:23:36

1 saying, boy, I would really like to quit. 04:23:38

2 Q. I direct your attention to page 4, in the middle 04:23:46

3 full paragraph beginning with the words 04:23:50

4 "In addition." 04:23:50

5 A. Um-hmm.

6 Q. It's legal to sell cigarettes in every state in the 04:23:54

7 United States, isn't it? 04:23:56

8 A. To people of a certain age, I believe that's 04:23:58

9 correct. 04:23:58

10 Q. What age is it? 04:24:00

11 A. I believe in the majority of states it's 18. There 04:24:04

12 may be a couple that it's -- or a few that are older 04:24:08

13 than that, but I believe in the majority of the 04:24:10

14 states the legal age is 18. 04:24:10

15 Q. Are there any states where the legal age is under 04:24:14

16 18? 04:24:14

17 MR. O'FALLON: Objection, relevance. 04:24:16

18 A. I am not sure of that. 04:24:18

19 Q. Do you know whether in 1970, for example, there were 04:24:22

20 some states in the United States where it was legal 04:24:24

21 to sell cigarettes to 16-year-olds? 04:24:28

22 MR. O'FALLON: Objection, relevance. 04:24:30

23 A. I am not -- that's something I really haven't looked 04:24:36

24 at. I looked at what the companies, basically, were 04:24:40

25 saying they were doing. You know, we had a right to 04:24:44

1 assume that they were doing, you know, the kinds of 04:24:48

2 things they were saying in the Cigarette Advertising 04:24:50

3 Code and other places about what they were doing. I 04:24:52

4 haven't gone and looked at the legal aspects of it. 04:24:56

5 Q. In the paragraph I had referred you to on page 4, in 04:25:02

6 that first full sentence you use the word "youth." 04:25:04

7 Do you see that, the last word? 04:25:08

8 A. Right. 04:25:08

9 Q. What is your definition of "youth"? 04:25:10

10 A. Well, in this particular instance what I tried to do 04:25:20

11 is take the definition of the tobacco companies. 04:25:28

12 You know, it moves around a little bit. 04:25:34

13 You know, if you look over on page 25 of the report 04:25:36

14 where it says RJR is saying in 1960 this young adult 04:25:42

15 market, "youth market" refers to a 14- to 04:25:44

16 24-year-old group. 04:25:50

17 So I was trying to sort of use the 04:25:54

18 definitions that the industry people were using. 04:25:58

19 But, as I say, sometimes that is 18. But in this 04:26:02

20 specific instance RJR defines, you know, the young 04:26:04

21 adult or what I would call the youth market as 14- 04:26:08

22 to 24-year-olds that they are marketing to. 04:26:10

23 Q. Was there a taxonomy of definitions included among 04:26:14

24 the tobacco industry documents you reviewed for this 04:26:18

25 case? 04:26:18

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1 MR. O'FALLON: Objection. 04:26:20

2 A. A taxonomy of definitions? 04:26:22

3 Q. (Nodding.) 04:26:24

4 A. Not that I recall seeing. 04:26:30

5 Q. So the only way you have been able to determine what 04:26:32

6 the writers of the tobacco industry documents meant 04:26:34

7 when they said young adult market is when they 04:26:38

8 specifically set out a particular age, like you 04:26:42

9 pointed out to us on page 25? 04:26:48

10 MR. O'FALLON: Objection. 04:26:50

11 A. Well, I think you have to look at, you know, the 04:26:54

12 kind of -- the totality of the documents that they 04:26:56

13 have gotten and try to piece it together from 04:26:58

14 various places what they mean when they are talking 04:27:02

15 about the youth market. 04:27:02

16 Q. There are other documents that you have cited in 04:27:04

17 here which use the phrase "young adult market" that 04:27:06

18 are written by other companies, aren't there, 04:27:08

19 besides R.J. Reynolds? 04:27:10

20 A. Well, let's see. Certainly there are -- I forget 04:27:20

21 exactly whether Philip Morris uses the precise 04:27:24

22 phrase "young adults market," but they use terms 04:27:28

23 like "young smokers" and that sort of thing. 04:27:30

24 Q. Do you know what age range the writer of any 04:27:34

25 particular document who uses the term "young smoker" 04:27:38

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1 is using if no such age range is set out in that 04:27:40

2 document? 04:27:42

3 MR. O'FALLON: Objection. 04:27:44

4 A. I mean, I think it is something that you really do 04:27:48

5 have to look at a document and make a judgment about 04:27:52

6 what the person is meaning by it. Sometimes it's 04:27:56

7 stated and sometimes it's not. And sometimes you 04:27:58

8 can see that it's right in the flow of other 04:28:02

9 marketing planning documents from particular time 04:28:04

10 periods, so you can make an inference, I think a 04:28:08

11 valid inference, as to what group they are referring 04:28:10

12 to. 04:28:10

13 Q. Professor Dolan, I am quite certain that there are 04:28:14

14 documents of companies other than RJR that use the 04:28:16

15 term "young adult smoker" and do not provide an age 04:28:20

16 range. 04:28:20

17 I just want to make sure that, let's say, 04:28:24

18 for example, if such a document was written by 04:28:26

19 someone from Lorillard, that you are not going to 04:28:28

20 interpret Lorillard's use of the words "young adult 04:28:32

21 smoker" in a document as meaning ages 14 to 24 04:28:36

22 because that's what somebody at RJR used in their 04:28:40

23 definition. 04:28:40

24 MR. O'FALLON: I will object to that on a 04:28:44

25 number of grounds. But do you have a specific 04:28:46

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1 document in mind that you want to show him? 04:28:54

2 A. Okay. In general I would not be using -- if I saw 04:29:06

3 the same terminology from two different companies, 04:29:08

4 let's say it's "young adult smokers" just as an 04:29:12

5 example, I would not take it as a going-in 04:29:20

6 proposition that "young adult smoker," that it's a 04:29:24

7 specific industry term that everybody in the 04:29:26

8 industry subscribes to. 04:29:28

9 So it might -- "young adult smoker" may 04:29:32

10 mean one thing in one company and may mean something 04:29:34

11 different in another. And I think you have to look 04:29:36

12 at the documents overall in making that judgment. 04:29:44

13 They might mean the same things, but they might mean 04:29:48

14 different. 04:29:48

15 Q. Would your answer be the same with respect to other 04:29:48

16 similar terms, such as "youth" or "young people"? 04:29:52

17 A. Yes. I mean, I generally would say that, you know, 04:29:54

18 for terms like that you -- it seems to me that you 04:30:00

19 do have to make a judgment, based on the data that's 04:30:04

20 available, in that particular context what the 04:30:06

21 person is talking about. 04:30:08

22 Q. Can I direct your attention to page 5, at the 04:30:18

23 section Roman numeral IV-A, "Principles of Industry 04:30:22

24 Conduct." 04:30:22

25 A. Yes. 04:30:22

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1 Q. Had you ever seen the Frank Statement prior to being 04:30:26

2 provided it by the attorneys in this case in the 04:30:30

3 tobacco industry documents? 04:30:32

4 A. I don't recall that I had seen it prior to becoming 04:30:38

5 involved in this case. I had heard mention of it, 04:30:42

6 but as far as actually looking at it, whether I -- 04:30:48

7 well, as I said, I don't recall that I had 04:30:50

8 specifically looked at it before I became involved 04:30:52

9 in this case. 04:30:54

10 Q. How had you heard the Frank Statement mentioned? 04:30:56

11 A. I don't recall specifically. But when it first came 04:31:02

12 up in the context of this case, I mean, it sort of 04:31:06
13 rang a bell with me that I had heard this before. 04:31:12
14 Q. As a marketing expert you -- strike that. 04:31:20
15 If you were designing an advertising 04:31:22
16 campaign for a consumer product, would you advocate 04:31:26
17 that the entire marketing effort be limited to one 04:31:30
18 medium? 04:31:32
19 A. You know, as a general rule, you know, I would not 04:31:42
20 say that that's something one would recommend 04:31:44
21 generally. I mean, there are some instances where 04:31:48
22 that may be the appropriate thing to do. But it 04:31:52
23 certainly is a question that, you know, should be 04:31:56
24 part of your planning process, rather than to say, 04:31:58
25 okay, we are going to go with one medium and that's 04:32:02

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1 the one we are going to use. You should really 04:32:04
2 think your way through whether it's going to be all 04:32:06
3 TV, TV/radio, TV/radio/newspaper, whatever. 04:32:10
4 Q. That's called the marketing mix? 04:32:12
5 A. No. 04:32:12
6 Q. Is that called the media mix? 04:32:14
7 A. That would be called a media mix, not the marketing 04:32:18
8 mix, right. The marketing mix, you know, is the 04:32:20
9 broader set of overall marketing activities. 04:32:24
10 Q. As a general rule, most marketers spread their 04:32:26
11 marketing efforts among several media, don't they? 04:32:30
12 A. I would say that most of the major consumer 04:32:38
13 packaged-goods firms would be allocating their media 04:32:42

14 dollars across a number of different media vehicles. 04:32:46

15 Q. Would you ever advocate running an ad for a consumer 04:32:50

16 product a single time in a single medium? 04:32:54

17 A. Possibly. 04:32:58

18 Q. Under what circumstances? 04:32:58

19 A. Well, I mean, if it fit in with my overall program 04:33:16

20 of marketing activities. So, you know, it would 04:33:20

21 depend upon what else I was doing with my 04:33:22

22 promotional strategies and my distribution and all 04:33:26

23 that kind of thing. 04:33:28

24 But, I mean, you might imagine where there 04:33:30

25 is a particular media event, you know, say, the 04:33:34

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1 Super Bowl or the Olympics or something like that, 04:33:36

2 and somebody decides, look, this is a really special 04:33:40

3 event that I have to dedicate all of my advertising 04:33:44

4 budget to because I think it's the best buy that's 04:33:46

5 going to come along for me given what I want to do 04:33:48

6 and the target audience that I have got. 04:33:52

7 Q. With respect to print advertising, isn't there a 04:33:54

8 general rule of thumb that you want a minimum of 04:33:58

9 three exposures, three runnings of the ads, in order 04:34:02

10 to maximize the chances of communicating with 04:34:06

11 consumers? 04:34:08

12 MR. O'FALLON: Objection, foundation. 04:34:10

13 A. Isn't there a rule that you use the same particular 04:34:12

14 ad three times, or the same particular ad copy? 04:34:16

15 Q. Yes, in print media, that you would run it at least 04:34:20

16 three times in order to maximize the chance of 04:34:22

17	reaching your consumers.	04:34:26
18	A. No; I wouldn't say that that's a generally held	04:34:28
19	principle, no.	04:34:30
20	Q. Have you ever placed advertising in the media?	04:34:32
21	A. Have I personally ever placed advertising in the	04:34:36
22	media?	04:34:38
23	Q. Yes, as a professional.	04:34:40
24	A. You know, I have advised companies on their	04:34:48
25	communication strategy. But have I personally gone	04:34:50

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1	and made media buys? No.	04:34:52
2	Q. There are professionals who specialize in making	04:34:54
3	media buys, are there not?	04:34:56
4	A. Oh, within advertising agencies, you know, they have	04:34:58
5	media buying groups, yes.	04:35:00
6	Q. And you are not familiar with the rule of thumb for	04:35:02
7	media buying that with respect to print media you	04:35:06
8	want to run it at least three times in order to	04:35:08
9	maximize the possibility of communicating with the	04:35:10
10	consumer?	04:35:10
11	MR. O'FALLON: Objection, foundation.	04:35:14
12	A. As I said, as far as the marketing -- I mean, I am a	04:35:18
13	little bit confused as to what exactly you are	04:35:22
14	talking about in the sense of -- is the principle	04:35:26
15	you are advocating that I run the same ad three	04:35:28
16	weeks in a row in Sports Illustrated or that I run	04:35:32
17	it once in Sports Illustrated and once in Time and	04:35:36
18	once in Newsweek? I am not quite sure what it is.	04:35:40

19 But I don't -- you know, it's much more 04:35:40
20 contact-specific than to say the general rule is, 04:35:46
21 well, you better run it three times. I mean, I 04:35:50
22 don't accept that that's a general principle. It 04:35:54
23 may be that some media buying groups have that 04:35:56
24 notion. But as a general rule, there's no data to 04:36:02
25 support that as a general rule, I would say. 04:36:04

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1 Q. Can I direct your attention to page 12, please. 04:36:22
2 A. Okay. 04:36:24
3 Q. And the full paragraph above section C, beginning 04:36:26
4 with the word "Thus." 04:36:28
5 A. Yes. 04:36:28
6 Q. In this section you are discussing -- in fact, the 04:36:34
7 title of the section is back on page 9, "Smoking and 04:36:40
8 Health: The 'Open Debate.'" 04:36:44
9 A. Right. 04:36:44
10 Q. The second sentence of the paragraph on page 12 04:36:46
11 states, "Elementary issues of research methodology 04:36:48
12 on the difference between statistical association 04:36:52
13 and causation were developed into major campaigns 04:36:54
14 and semantic games played regarding the meaning of 04:37:00
15 'causation' and 'proof.'" 04:37:04
16 A. Right. 04:37:04
17 Q. Did I read that correctly? 04:37:06
18 A. I believe so. I maybe wasn't paying quite as close 04:37:10
19 attention as I should have there, but I believe it 04:37:12
20 was correct. 04:37:14
21 Q. The sentence is going to speak for itself and let's 04:37:16

24	association as causation?	04:39:00
25	MR. O'FALLON: Objection, foundation,	04:39:04
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1	misstates.	04:39:06
2	A. I mean, a lot of the early studies were in the	04:39:10
3	nature of, you know, correlational, statistical	04:39:14
4	association kinds of studies.	04:39:16
5	And as I understand from his expert	04:39:18
6	report, it's the accumulation of these studies which	04:39:22
7	one individually cannot -- because of their design,	04:39:26
8	any one individually cannot prove causation, but	04:39:30
9	it's the accumulation of those studies over time	04:39:32
10	that causes the field to make a judgment on	04:39:34
11	causation.	04:39:36
12	Q. You have taken a lot of statistics courses, haven't	04:39:38
13	you?	04:39:38
14	A. I have.	04:39:40
15	Q. Do you believe that statistics can prove that A	04:39:42
16	causes B?	04:39:44
17	MR. O'FALLON: Objection.	04:39:46
18	A. I do believe that, you know, a limitation of	04:39:50
19	things -- like regression analysis, which is, you	04:39:56
20	know, a common data analysis technique, I mean, it	04:40:04
21	is a correlational technique. Basically it shows	04:40:04
22	statistical association rather than causation.	04:40:08
23	And the way that one -- I mean, I think	04:40:16
24	that's well-known. You know, that's sort of what I	04:40:22
25	have in mind as an elementary issue of research	04:40:24

1 methodology, that these techniques show statistical 04:40:26
2 association. 04:40:28

3 But it's the accumulation of these studies 04:40:30
4 over time, the number of opportunities which you 04:40:34
5 have to possibly reject a hypothesis, that that 04:40:38
6 accumulates over time into causation. 04:40:40

7 Q. Several times in this answer you have used the 04:40:42
8 phrase "over time." What period of time are you 04:40:46
9 referring to when you use that phrase? 04:40:48

10 A. Well, I am referring to, you know, the time horizon 04:41:02
11 that we are talking about in this litigation. 04:41:06

12 You know, ultimately in, what, '64, I 04:41:08
13 guess, the surgeon general makes a statement of 04:41:12
14 causation. And then I think it -- you know, you get 04:41:16
15 more and more evidence over time. 04:41:20

16 Q. Prior to 1964 do you believe it had been proven that 04:41:24
17 cigarette smoking caused lung cancer? 04:41:26

18 A. I guess it had been proven in some people's minds. 04:41:44
19 But again I go back to, you know, in 1958 basically 04:41:50
20 people from B.A.T. came and visited all of the 04:41:56
21 tobacco companies -- or virtually all of the tobacco 04:41:58
22 companies, made visits to TIRC three or four times, 04:42:02
23 consulted with their scientific advisory board, and 04:42:04
24 said, look, basically in 1958 there's only one 04:42:10
25 person out of the 35 we talked to that agrees with 04:42:14

1 the proposition that smoking causes lung cancer and 04:42:18
2 the conclusion he draws is certainly not justified. 04:42:20
3 So I think that's where we were in 1958. 04:42:24
4 Q. Can I direct your attention to page 14. In the 04:42:34
5 middle full paragraph there, in the second sentence 04:42:36
6 you refer to a Tobacco Institute press release from 04:42:40
7 May of 1988. Do you see that reference? 04:42:42
8 A. I do. 04:42:42
9 Q. You saw several press releases among the tobacco 04:42:46
10 industry documents you reviewed, did you not? 04:42:48
11 A. I saw a number of them, yes. 04:42:50
12 Q. Do you have any evidence that any of those press 04:42:52
13 releases ever were published for the American public 04:42:56
14 to read? 04:42:58
15 MR. O'FALLON: Objection. I am not going 04:43:00
16 to make a long speaking objection, but that's the 04:43:02
17 exact kind of information we are in the discovery 04:43:04
18 phase of trying to get now. We had a hearing on 04:43:06
19 this just a couple of days ago, so that's certainly 04:43:08
20 going to be forthcoming. TI in particular is 04:43:12
21 supposed to start producing that kind of information 04:43:14
22 starting this Friday. 04:43:18
23 A. Your question was do I have any evidence that this 04:43:26
24 particular one that I referenced was actually picked 04:43:28
25 up and published by a newspaper? 04:43:30

1 Q. Yes. 04:43:32
2 A. I don't have any particular information with respect 04:43:34

3 to this particular one. 04:43:42

4 But, again, it's the contrast between what 04:43:46

5 the industry is saying internally -- what would 04:43:50

6 strike me as a contrast between what the industry is 04:43:54

7 saying internally, that they're saying, look, it's 04:43:56

8 addictive, habituating, it's -- nicotine is the 04:43:58

9 addicting agent in cigarettes and so on and so 04:44:02

10 forth, and then their record of public statements is 04:44:06

11 exactly the opposite, including the CEOs of the six 04:44:10

12 major companies going to Congress and saying 04:44:12

13 nicotine is not addictive. 04:44:14

14 Q. Do you believe nicotine is addictive? 04:44:16

15 A. I do. I rely on the opinion of the -- Dr. Hurt, the 04:44:24

16 addiction expert, for that. I mean, I observe in 04:44:26

17 the company documents that the company documents are 04:44:30

18 basically saying it is. And then his expert 04:44:32

19 judgment is that it is, as well. 04:44:36

20 Q. Can I direct your attention to page 16, please. The 04:44:42

21 first sentence under "Consumer Behavior" indicates 04:44:44

22 generally that "A large number of industry studies 04:44:48

23 have been directed to understanding consumer 04:44:52

24 behavior..." Is that your opinion? 04:44:54

25 A. Yes. 04:44:54

1 Q. Is there anything unusual or improper about tobacco 04:44:58

2 companies studying consumer behavior? 04:45:02

3 A. There's nothing improper about studying consumer 04:45:08

4 behavior and nothing unusual in the sense that, you 04:45:12

5 know, we have been talking about what other consumer 04:45:14
6 packaged-goods companies do. I mean, it's generally 04:45:18
7 good marketing practice that you build your 04:45:20
8 marketing program off an understanding of consumer 04:45:22
9 behavior. 04:45:22
10 Q. In your opinion, are the tobacco companies good 04:45:26
11 marketers of their products? 04:45:28
12 A. No. 04:45:30
13 Q. Direct your attention to page 17. In the first full 04:45:40
14 paragraph -- and let me see if I am understanding 04:45:46
15 this -- you are noting that only 10 percent of 04:45:50
16 current smokers switch. Do you see where you said 04:46:02
17 that on page 17 in the top paragraph? 04:46:06
18 A. Right, right. 04:46:06
19 Q. In your opinion, is that an insignificant number of 04:46:10
20 switchers? 04:46:12
21 A. I mean, when you consider the value of a market 04:46:18
22 share point in this business, I would say that that 04:46:20
23 is a significant number to which a marketing company 04:46:30
24 would be paying attention. 04:46:34
25 Q. So it would be in the interest of each of the 04:46:38

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1 cigarette companies to try to induce other smokers 04:46:40
2 of other cigarette brands to switch brands to their 04:46:44
3 brand? 04:46:46
4 A. It would be in the interest of the cigarette 04:46:50
5 companies to try to find a way to induce somebody to 04:46:56
6 switch to their brand, yes. 04:46:56
7 Q. And when we say in their "interest," we mean in 04:47:04

8	their financial interest?	04:47:06
9	A. Yeah, that's basically what I had in mind, right,	04:47:12
10	that it's quite profitable to have, you know,	04:47:16
11	somebody switch to your brand and then stick with	04:47:20
12	your brand, yep.	04:47:20
13	Q. When you discuss addiction in your expert report,	04:47:24
14	which is Exhibit 3306, do you believe that the	04:47:26
15	smokers you are referring to cannot quit smoking?	04:47:32
16	A. Do I believe that smokers cannot quit?	04:47:38
17	Q. Yes.	04:47:40
18	A. No, not -- I do not believe it is the case that all	04:47:48
19	smokers are unable to quit; some do.	04:47:54
20	Q. You have taken several economics courses, haven't	04:48:00
21	you?	04:48:00
22	A. Yeah; yes, I have.	04:48:02
23	Q. Have you ever seen the example used in a book that	04:48:04
24	heroin addiction is the classic example of perfect	04:48:08
25	inelasticity of demand?	04:48:12

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1	MR. O'FALLON: Objection.	04:48:16
2	A. I forget where I have seen that particular example.	04:48:28
3	It wouldn't surprise me if somebody was using that	04:48:30
4	as an example.	04:48:32
5	Q. When we say heroin use would be an example of	04:48:34
6	perfect inelasticity, that means that no matter how	04:48:38
7	high the price went up, the demand would remain the	04:48:40
8	same?	04:48:42
9	A. Yeah, if -- again, I am not saying that it is true	04:48:48

10	that heroin is perfectly inelastic, but the term	04:48:54
11	"perfect" -- if a good is perfectly inelastic, that	04:49:00
12	means as you increase the price, the quantity sold	04:49:04
13	does not go down.	04:49:04
14	Q. With respect to cigarettes, the demand is quite	04:49:08
15	elastic, is it not?	04:49:12
16	MR. O'FALLON: Objection.	04:49:12
17	A. Well, I don't know what you mean by "quite," but	04:49:16
18	there have been a number of studies documenting the	04:49:18
19	price elasticity of cigarettes, which are mentioned	04:49:24
20	in the documents. And I think the general finding	04:49:30
21	is that there are significant -- the price	04:49:36
22	elasticities are significant.	04:49:38
23	Q. In other words, if the price of cigarettes goes up,	04:49:42
24	demand goes down?	04:49:44
25	A. That's the general finding, that a price increase	04:49:48

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1	does cause a decrease in consumption.	04:49:50
2	Q. Direct your attention to page 20. Under	04:50:00
3	"Advertising and Promotion," the first sentence	04:50:02
4	reads, "Even with restrictions on use of certain	04:50:04
5	media, the tobacco industry's expenditure on	04:50:08
6	advertising and promotion was very large." Do you	04:50:10
7	see that?	04:50:10
8	A. I do.	04:50:10
9	Q. How does the tobacco industry's expenditure on	04:50:16
10	advertising rank with respect to other national	04:50:18
11	advertisers?	04:50:20
12	MR. O'FALLON: Objection.	04:50:22

13 A. Currently? 04:50:24
14 Q. Yes. 04:50:26
15 A. I mean, I don't know precisely, you know, if you 04:50:34
16 kind of listed the industries from top to bottom in 04:50:40
17 terms of how much they spent on advertising, exactly 04:50:42
18 where the tobacco industry would now fall. 04:50:46
19 But it is the case that what has happened 04:50:48
20 in the tobacco industry is there has been a big 04:50:52
21 movement of money from advertising into promotional 04:50:54
22 techniques. 04:50:56
23 Q. Are you familiar with the concept of advertising 04:51:02
24 spillover? 04:51:02
25 A. Yes. 04:51:04

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1 Q. And that means that advertising is -- that people 04:51:12
2 who are not in the target audience are exposed to 04:51:16
3 the advertising inadvertently? 04:51:18
4 A. Right. 04:51:18
5 MR. O'FALLON: Objection to the term 04:51:22
6 "inadvertent." 04:51:24
7 A. Right. I mean, basically that, you know, we have a 04:51:26
8 certain media vehicle and we place an ad in the 04:51:30
9 media vehicle and, you know, our target audience was 04:51:34
10 females, so we placed the ad in Ms. Magazine and, lo 04:51:44
11 and behold, some males read Ms. Magazine. 04:51:46
12 Q. And that's an example of advertising spillover? 04:51:50
13 A. I will accept that if that's what you want to -- I 04:51:56
14 mean, I understand what you mean when you say that. 04:52:00

15 I think it's a reasonable use of the term. Some 04:52:02
16 other people would use it for something else, but... 04:52:04
17 Q. Would you agree that the use of promotions minimizes 04:52:08
18 advertising spillover? 04:52:10
19 MR. O'FALLON: Objection. 04:52:12
20 A. Well, promotion and advertising are two different 04:52:14
21 things. So, you know, you can't have a promotional 04:52:18
22 technique that exhibits advertising spillover. Do 04:52:24
23 you understand what I mean? 04:52:26
24 Q. I understand. But there is -- when you engage in a 04:52:28
25 promotion, you generally deal with only existing 04:52:32

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1 users of your current product, right? 04:52:34
2 MR. O'FALLON: Objection. 04:52:36
3 A. No, no. That's not necessarily the case, no. 04:52:42
4 Q. When you use a promotion, you are able to more 04:52:46
5 accurately target your potential customers than you 04:52:50
6 are if you use advertising; isn't that a fair 04:52:54
7 statement? 04:52:54
8 MR. O'FALLON: Object to the abstract 04:52:56
9 nature and lack of specificity. 04:53:00
10 A. I mean, it's hard to make a general statement about 04:53:02
11 that because, I mean, you could use direct mail 04:53:06
12 advertising, for example. That's targetable down to 04:53:10
13 the individual household level. 04:53:14
14 But promotional techniques, you can target 04:53:22
15 them, you can drop coupons through the mail. But 04:53:26
16 you can also advertise through the mail. 04:53:28
17 So in general I don't think it's correct 04:53:32

18	to say that there's less spillover in promotions	04:53:36
19	than there is in advertising. In both events you	04:53:40
20	can decide you are going to control the spillover	04:53:42
21	via the media that you use.	04:53:46
22	Q. Have the marketing efforts of the tobacco industry	04:53:48
23	been successful in increasing aggregate demand for	04:53:52
24	cigarettes?	04:53:54
25	A. Yes.	04:53:54

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1	Q. What evidence do you rely on to support that	04:53:56
2	opinion?	04:53:58
3	A. Well, basically I would say that, as we have talked	04:54:02
4	about already, and just argue it from the	04:54:06
5	fundamentals of marketing, that we understand what	04:54:10
6	consumer behavior is like in this product category;	04:54:16
7	it's well documented.	04:54:18
8	And then you say, okay, we have got this	04:54:20
9	kind of consumer behavior. Let's look at the	04:54:24
10	overall marketing activities of the cigarette	04:54:30
11	manufacturers. Is that increasing the perceived	04:54:32
12	value that a significant number of customers would	04:54:34
13	place on cigarettes? My judgment is yes. So that's	04:54:38
14	point number one.	04:54:38
15	Point number two is, you know, if you just	04:54:42
16	look at the documents that the -- our tobacco	04:54:50
17	industry documents in which the industry	04:54:52
18	participants themselves talk about what they are	04:54:54
19	doing, basically they say, look, there have been two	04:54:58

20 negative impacts on the size of the market: One is 04:55:02
21 price -- retail price increases, primarily through 04:55:06
22 excise taxes; and also the antismoking kind of 04:55:10
23 communications coming. 04:55:14
24 And therefore what we have to do is -- I 04:55:16
25 think the terminology that B.A.T. used to, you know, 04:55:20

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1 prevent this, eradicate this slide into decreasing, 04:55:24
2 we have to undertake -- we have to get our 04:55:26
3 credibility back so we can participate in the debate 04:55:30
4 and provide positive messages about cigarette 04:55:34
5 smoking to counteract the negative messages. 04:55:36

6 So I think, you know, the cigarette 04:55:38
7 companies see negative impact to the antismoking 04:55:42
8 messages and are saying, look, our efforts have to 04:55:46
9 be to aggressively combat that. 04:55:48

10 Thirdly, I think you can look at -- 04:55:50
11 throughout the documents you see people saying how 04:55:54
12 successful our campaign was in achieving certain 04:56:00
13 effects. 04:56:02

14 I mean, if you look at Philip Morris' 04:56:04
15 characterization of the Camel campaigns, basically 04:56:10
16 they say, look, Camel is successful because they 04:56:12
17 have reduced -- their marketing activities have been 04:56:14
18 successful in reducing the negatives of -- perceived 04:56:22
19 negatives of cigarette smoking. 04:56:24

20 If you look at what the companies have 04:56:26
21 done in terms of introducing low-tar brands, saying, 04:56:30
22 look, this is our health reassurance brand -- RJR 04:56:30

23 says the ULTs, the ultra low-tar cigarettes, is the 04:56:36
24 way that we are going to help this guy get his 04:56:38
25 family off his back, we are going to make him feel 04:56:42

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1 more comfortable. 04:56:42
2 So I think, you know, those are all things 04:56:44
3 that I see in the company documents that say that 04:56:48
4 the marketing activities of the tobacco companies 04:56:56
5 are a significant contributing factor to the value 04:56:58
6 which a significant number of people are placing on 04:57:00
7 cigarettes and, consequently, influence the 04:57:02
8 aggregate size of the market. 04:57:06
9 Q. Do you believe cigarette advertising on billboards 04:57:08
10 is directed at children? And by that I mean under 04:57:12
11 18 years of age. 04:57:14
12 A. Some of it I would judge to be directed at people 04:57:26
13 under 18 years of age, not because it's on a 04:57:32
14 billboard necessarily, but because of what I see in 04:57:36
15 the company documents. 04:57:38
16 Q. Do you anticipate testifying about any particular 04:57:44
17 cigarette advertisements during your trial 04:57:46
18 testimony? 04:57:48
19 A. I may. I certainly wouldn't say that I've made a 04:57:58
20 decision that at trial I would not -- you know, that 04:58:00
21 I will not mention any particular ad specifically. 04:58:06
22 Q. What ad campaign specifically -- strike that. 04:58:12
23 Would any cigarette advertising campaigns 04:58:16
24 you might testify about at trial be reflected in the 04:58:18

25 tobacco industry documents that we have discussed? 04:58:20

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1 A. Well, I don't know what other information might 04:58:38
2 become available to me between now and the time of 04:58:42
3 trial, so I am not sure that that would be the case 04:58:48
4 or not. 04:58:48
5 Q. Do you have any current plans to conduct additional 04:58:52
6 research between now and the time of the trial other 04:58:54
7 than reviewing any tobacco industry documents that 04:58:58
8 might be sent to you by the lawyers? 04:59:02
9 A. No, I don't have any plans to conduct any surveys or 04:59:08
10 experiments or that sort of thing; no, I don't as I 04:59:14
11 sit here at the moment. 04:59:16
12 Q. Do you favor a ban on cigarette advertising and 04:59:22
13 promotion? 04:59:22
14 A. No, I do not. 04:59:28
15 Q. Do you favor increased regulation of cigarette 04:59:32
16 advertising and promotion? 04:59:34
17 A. I favor -- well, I would say I favor the end result 04:59:48
18 of decreasing -- I favor the end result of the 05:00:00
19 advertising that is used actually conforming to what 05:00:06
20 the Cigarette Advertising Code said it was going to 05:00:08
21 conform to. 05:00:10
22 Whether one achieves that -- you know, 05:00:10
23 exactly what is the form of regulation that would 05:00:12
24 achieve that, I am not certain. But certainly when 05:00:16
25 the Cigarette Advertising Code says we are not going 05:00:20

1 to have any advertising which, you know, links 05:00:22
2 smoking to sex, I would like to see that in fact be 05:00:30
3 the case, which is not the case at the moment. 05:00:32
4 Q. Could I direct your attention to page 30 of your 05:00:38
5 report. Toward the bottom of the page under F, 05:00:48
6 entitled "Summary" -- 05:00:50
7 A. Right. 05:00:50
8 Q. -- the first sentence says, "The tobacco industry 05:00:52
9 did not fulfill its 'basic obligation' which it 05:00:56
10 proclaimed 'paramount to every other consideration 05:01:00
11 in our business.'" What basic obligation are you 05:01:04
12 referring to? 05:01:06
13 A. Let's see. Referring back to, really, what I have 05:01:10
14 already quoted on page -- let's see -- page 5, where 05:01:20
15 the TIRC says we "accept an interest in people's 05:01:24
16 health as a basic responsibility" and the Frank 05:01:32
17 Statement widely said in paid communications -- the 05:01:34
18 industry and sponsors described this caring for the 05:01:36
19 people's health as a "basic responsibility, 05:01:38
20 paramount to every other consideration in our 05:01:40
21 business." 05:01:40
22 So what I am quoting on page 30 really 05:01:44
23 harkens back to what I have already quoted on 05:01:48
24 page 5. 05:01:52
25 Q. On page 32 of your expert report you indicate in the 05:02:14

1 second sentence of the major paragraph there that 05:02:16

2 "The antismoking position has been articulated by a 05:02:20

3 host of sources, including Reader's Digest, the 05:02:26

4 surgeon general, down to local town meeting members 05:02:28

5 and private citizens." On what do you base that 05:02:30

6 statement? 05:02:32

7 A. Well, I mean, the first two parts of it would be, 05:02:38

8 you know, the documents which I have received, you 05:02:40

9 know, that tell me what the Reader's Digest articles 05:02:44

10 have been on this and the surgeon general reports. 05:02:48

11 I guess "down to local town meeting 05:02:50

12 members and private citizens" is more my observation 05:02:54

13 of what's going on in the kind of circles that I 05:03:00

14 orbit around in. 05:03:02

15 Q. That was not what you would characterize as formal 05:03:04

16 research, was it, gathering observations in the 05:03:08

17 circles you -- 05:03:12

18 A. I did not have a formal research program of, you 05:03:16

19 know, going throughout town meetings and so forth. 05:03:20

20 But I'm just making the observation here 05:03:22

21 that, you know, there are, kind of, these published 05:03:30

22 sources, like Reader's Digest and the surgeon 05:03:34

23 general, who are articulating, you know, the 05:03:36

24 negative health effects and addictive nature of 05:03:44

25 cigarettes. And then you also see it in, sort of, 05:03:46

1 personal communications that people are making. 05:03:48

2 MR. PURVIS: If we can take about a 05:03:56

3 one-minute, in-place break and let me confer with my 05:03:58

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19
20 ROBERT DOLAN

21 DATED:
22

23 NOTARY PUBLIC

24 PLEASE SUPPLY ALL OTHER PARTIES WITH A COPY
25 AND RETURN ORIGINAL BY 10-8-97 TO:

Lori A. Case, Court Reporter
12 South Sixth Street, Suite 620
Minneapolis, Minnesota 55402

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1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF RAMSEY)

4

5 Be it known that I took the deposition of ROBERT
6 DOLAN on August 14, 1997 at the law office of Robins,
7 Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle
8 Avenue, Minneapolis, Minnesota;

That I was then and there a notary public in and for
the County of Ramsey, State of Minnesota, and that I was
duly authorized to administer an oath;

8

9 That the witness before testifying was first duly
sworn to testify the truth and nothing but the truth;

10 That the deposition was stenographically reported by
myself and reduced into print through computer-aided
11 transcript, and that it is a true record to the best of
my ability;

12
13 That I am not related to any of the parties hereto,
nor interested in the outcome of the action;

14 That the cost of the original transcript has been
charged to the party noticing the deposition, unless
15 otherwise agreed by counsel, and that copies have been
made available to all parties at the same cost, unless
16 otherwise agreed upon by counsel;

17 That the reading and signing of the deposition by
the witness was not waived.

18
19 WITNESS MY HAND AND SEAL this 6th day of September,
1997.

20

21

LORI A. CASE, RPR
Notary Public

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